

A
T R E A T I S E
OF THE
P L E A S O F T H E C R O W N

OR
A S Y S T E M
OF THE
P R I N C I P A L M A T T E R S R E L A T I N G T O T H A T S U B J E C T,
D I G E S T E D U N D E R P R O P E R H E A D S.

By WILLIAM HAWKINS,
SERJEANT AT LAW.

T H E S E V E N T H E D I T I O N :

In which the Text is carefully collated with the original Work; the marginal References corrected; new References from the modern Reporters added; a Variety of *Manuscript Cases* inserted; and the whole enlarged by an Incorporation of the several Statutes upon Subjects of Criminal Law, to the THIRTY-FIFTH YEAR OF GEORGE THE THIRD. To which an Explanatory Preface is prefixed, and new and copious Indexes are subjoined.

By THOMAS LEACH, Esq.
OF THE MIDDLE TEMPLE, BARRISTER AT LAW,

I N F O U R V O L U M E S.
V O L. I.

L O N D O N :
PRINTED FOR G. G. AND J. ROBINSON, PATERNOSTER-ROW,
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TO
THE RIGHT HONOURABLE
Sir' J A M E S E Y R E, Knt.
LORD CHIEF JUSTICE
OF
HIS MAJESTY'S COURT OF COMMON PLEAS.

MY LORD,

YOUR LORDSHIP will permit me again to present to you an Edition of HAWKINS'S PLEAS OF THE CROWN. The condescension with which Your LORDSHIP was pleased to accept the former Edition encourages me to request your protection in this second attempt to render still more perfect this valuable Digest of our Criminal Law.

THAT the Profession of the Law, and the Public at large, may long enjoy the benefit of Your LORDSHIP's profound knowledge, experience, and benevolence in the administration of this important branch of the English Law, is the sincere wish of,

MY LORD,

Your LORDSHIP's

Most Obedient

and Obligated

Humble Servant,

Dec. 1, 1794.

THOMAS LEACH.

T O
THE RIGHT HONOURABLE
Sir J A M E S E Y R E, Knt.
LORD CHIEF BARON
O F
HIS MAJESTY'S COURT OF EXCHEQUER.

MY LORD,

THE permission to inscribe my humble labours to Your LORDSHIP, is a testimony of Your LORDSHIP's known disposition to encourage even the appearance of useful industry.

THE original Work, as well from the nature of its subject, as from its established merit, seems to possess a natural claim to Your LORDSHIP's protection. It regards a system of law, the most serious and important in its consequences to the interests of society; the profound knowledge, and firm but benevolent administration of which has eminently distinguished Your LORDSHIP in the eyes of the profession, and of the public.

YOUR LORDSHIP will permit me to join in that respect and veneration which is so justly entertained for Your LORDSHIP's high judicial character; and particularly to express the honour and gratitude I feel in being allowed to subscribe myself,

MY LORD,

Your LORDSHIP's

Most Obedient

and Obliged

Humble Servant,

July 18, 1787.

THOMAS LEACH.

P R E F A C E

TO THE

PRESENT EDITION.

THE EDITOR, sensibly impressed by the very favourable reception which the former edition of this Work met with from the Profession, has, in preparing the present publication for the press, studiously endeavoured to render it more perfect and complete.

FROM the size of the former edition, and the great number of new statutes and judicial decisions which it was found necessary to introduce, he has been obliged to divide the Work into four volumes.—THE FIRST treats, in general, of those offences that are denominated *Crimes*;—THE SECOND is, with very few exceptions, confined to *Misdemeanors*;—THE THIRD describes the powers and authorities of the several Courts of Criminal Jurisprudence, together with the learning relating to appeals;—and in THE FOURTH will be found the whole proceedings from the framing and finding an indictment or information, to the final execution of the law by the punishment of the offender.

BESIDES this general division of the Work, many other alterations have been made in each of the volumes.

PREFACE TO THE PRESENT EDITION.

IN the FIRST VOLUME, in the chapter of "Offences against the King," a new and more perspicuous arrangement of the matter, particularly that part of it which relates to "counterfeiting the coin," has been made. In the chapters on LARCENY and ROBBERY also, the various judicial decisions are made to form a part of the text, and the several statutes by which the different kinds of this offence are deprived of the benefit of clergy, with the construction they have from time to time received, are continued at the end of the chapter. The chapter on PIRACY also has been considerably enlarged. But the most material alteration in the volume, is a new collection of the whole code of crimes created by statute, arranged, as nearly as possible, according to the method observed by Sir WILLIAM BLACKSTONE in his Commentaries. The extracts of these statutes from the Statute Book are, in general, much enlarged, and have been carefully collated with the originals; and at the end of each statute the judicial determinations which have been made upon it are inserted as a comment upon the text.

IN THE SECOND VOLUME the law relating to PUBLIC HOUSES, which before was a mere chronological series of the statutes on that subject, has been digested under different heads, and the new statutes, with the decisions thereon, inserted. Under the title MONOPOLIES also will be found a great variety of new matter respecting the law of Literary Property, and the exclusive right which is conferred by patent or act of parliament to manufacturers in certain cases. The chapter on USURY has been entirely new-modelled; and all the new decisions upon this subject added. The laws relating to the

PREFACE TO THE PRESENT EDITION.

SEDUCTION OF ARTIFICERS, to the EXPORTATION OF TOOLS, to GAMING, and to VAGRANTS, will also be found among the new matter contained in this volume.

IN the THIRD VOLUME the law relating to the POWER AND OFFICE OF JUSTICES OF THE PEACE, whether acting individually or in sessions, has been the particular object of the EDITOR'S attention. The subjects are now divided into distinct chapters; arranged under new heads; and the whole law, as far as it was capable of being collected from manuscript notes and the modern reporters, inserted.

IN the FOURTH VOLUME a new chapter concerning INFORMATIONS *Quo Warranto* has been introduced; the matter relating to PROCESS BY *Certiorari* AND OUTLAWRY considerably enlarged; as well as the chapter on EVIDENCE in Criminal Cases.

To these alterations all the decisions which have been made since the last edition, are inserted under their respective titles; but the new matter is still distinguished by this mark † at the beginning of each section.

THE EDITOR has only ventured to call the additions and arrangements above described by the name of Alterations; but he trusts they will be found Improvements, as he has endeavoured with much industry and anxiety to render the Work more useful to the Profession.

P R E F A C E

TO THE

SIXTH EDITION.

THE high estimation in which MR. SERJEANT HAWKINS' Treatise of THE PLEAS OF THE CROWN has been universally held by the Gentlemen of the Profession, renders any attempt either to praise or to explain the original Work unnecessary. But as the present Edition is materially different from all those which have preceded it, the EDITOR feels it incumbent on him to describe the general design upon which he has endeavoured to raise this invaluable production from its former state of imperfection.

THIS admired Treatise of Criminal Law was first published soon after the Accession of the present Royal Family to the throne. The increase of commerce, opulence, and luxury, since that period, has introduced a variety of temptations to fraud and rapine, which the Legislature has been forced to repel, by a multiplicity of occasional statutes, creating new offences and inflicting additional punishments. These statutes are now, for the first time, incorporated with the original text, digested into order, and either arranged under the several titles to which they respectively belong, or erected into separate and independent chapters, in the form of Appendix. To prevent, however, the reputation of the Author from the danger of being injured by any false or injudicious insertion of the EDITOR, the new matter is carefully distinguished by this mark † at the opening of each section.

BUT

PREFACE TO THE SIXTH EDITION.

BUT while, during this interval, the Legislature was thus anxiously providing new laws to meet the various emergencies of the times, many of the statutes recited in the former Editions of this Work, either expired or were repealed.—Of this dead and useless matter, the EDITOR has preserved such portions only, as are made the subjects of the Author's observations. These observations, it is true, are the expositions of statutes now extinct; but as they peculiarly form a part of the original composition, it would have been a violation of his duty as EDITOR, to have expunged them, and would have deprived the Author of a proportionate share of the veneration and respect with which every part of his Work has been uniformly and deservedly honoured. The preservation of them indeed may prove essentially useful; for as many of the new statutes frequently pursue, with very little variation, the language of the old enacting clauses, the sound constructions that have expounded the one, will serve either directly, or by analogy, to illustrate and explain the other.

THE many other parliamentary alterations which the criminal laws of this country have undergone, during the long course of near seventy years, are also ingrafted into the body of the Work; and the whole text is carefully collated with the former Editions, and with the printed statutes.

THE multiplicity of marginal references with which this Work so peculiarly abounds, was continued, in the former Editions, without intermission, throughout the page: and the eye was, thereby, forced upon a painful research, to find the letters by which their several applications were intended to be discovered. This obscurity is removed; and they are now placed opposite the respective sections to which they refer.—These references have also undergone a careful examination; those

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those which were found to burthen the margin without illustrating the text are expunged ; and new citations extracted from all the Modern Reporters are inserted in their stead. But this new arrangement of the references has compelled the EDITOR to abandon the usual mode of printing the pages of the old Editions in the margin. He has, however, prefixed a table to each volume, which exhibits, at one view, where every page in the former Editions begins and ends in the present Work.

To the text thus formed and brought down to the present session of parliament, the determinations of the superior courts, decisions of the judges upon reserved cases, and points ruled by authority upon trials, are added as commentaries, and made to accompany the sections they are designed to expound.

UPON this part of the Work the EDITOR is fearful that his zeal not to omit any illustration, which, by possibility, might be useful, may have betrayed him into the error of inserting many notes, either not sufficiently compressed or superabundant. He flatters himself, however, that as many of them are transcribed from MANUSCRIPT CASES, which have never before been printed, their novelty will, in some measure, compensate both for their length and multiplicity.

THE sources from which he has derived his Collection of Manuscript Cases have been various ; but he has inserted those only which appeared to him to possess unquestionable authenticity. If, upon inspection, any should be found not perfectly correct, it should be remembered, that decisions upon reserved cases of criminal law are not, like arguments relating to property, open to the acquisition of attentive industry in WESTMINSTER-HALL, but being, in general, discussed by the Judges

PREFACE TO THE SIXTH EDITION.

Judges themselves, and the resolutions delivered at the several circuits, on which the cases arose, they are to be acquired only by the favour of the Judges, or by the private friendship of those to whom they may have been communicated. Upon this subject the EDITOR, with a mixture of pride and gratitude, acknowledges the great and liberal assistance he has received from his professional friends, whose kindness will, perhaps, be found to form the most valuable part of the Work.

THE Author, in his Preface, declares that it was his intention "to reduce all the laws relating to THE PLEAS OF THE CROWN under one general scheme, that they might be understood with much less difficulty than they had been." To accomplish this design of his Author, the EDITOR has anxiously endeavoured to form the Work into one complete and entire code of *English* criminal jurisprudence, as it exists at this day, upon the records of the law: but he is fearful that his zeal has led him to attempt a performance too difficult for his exertions to attain, as, upon a review of the sheets, several alterations and arrangements have suggested themselves to his mind, which he conceives would have rendered the whole more perfect and complete. Confident, however, that no pains have been spared, and relying that the Work has received a real and useful improvement from the alterations and additions which have been made, he respectfully submits his labours to the judgment, candour, and protection of a learned and liberal profession.

TO THE RIGHT HONOURABLE
THOMAS LORD PARKER,
BARON OF MACCLESFIELD,
AND
LORD CHIEF JUSTICE
OF
ENGLAND.

MY LORD,

THE following *Treatise*, containing that part of the law, which is peculiarly under the administration of the chief justice of *England*, I presumed, in regard to the subject of it, to think of presenting to Your LORDSHIP; which your goodness having been pleased to permit, it is with the less uneasiness that I venture to make it public; for I could not hope to introduce it into the world with greater advantage than under your protection.

THIS was the real ground of my ambition to dedicate it to Your LORDSHIP, and not to give myself an opportunity of publishing how much I honour those wonderful talents, that have raised you to so high a station. A private character indeed may be set forth to advantage, and many virtues in it be made known by an address of this nature, which might otherwise have lain for ever concealed: But Your LORDSHIP's is public and conspicuous, and can appear nowhere with so much lustre as when you sit in judgment, where that vast genius you are blessed with, shines forth to all the world, adorned with all the improvements that human art can furnish, and supported with the greatest courage and integrity.

AND nothing less, my LORD, could give you that command of all the variety of business which comes before you, and that facility with which you dispatch it. The
most

THE DEDICATION.

most intricate points of law, that have for ages lain in confusion and obscurity, when they fall under Your LORDSHIP's consideration, receive such light, are stated, and explained with such exact method, and such propriety and beauty of expression, that the most polite compositions appear not more elegant, nor the most demonstrative more convincing. This, My LORD, is the agreeable part of the exercise of your authority, being no violence to that general humanity which you delight to shew to all mankind. But the duties of your office require you sometimes to put on another character, and to shew the awful face of justice, to curb the rage of an unruly people, and to fright them into their duty by the terrors of the law; and it is with pleasure all good men see Your LORDSHIP pursue the prevailing vices of the age with such zeal and indignation, that crimes no longer appear less odious for being fashionable, nor are they more secure from punishment for being popular.

THESE, My LORD, are blessings which the whole Nation shares in, and have an influence upon all parts of the Civil Administration. But we, who have the honour to attend Your LORDSHIP at the Bar, are in a more particular manner to acknowledge our obligations, for that candor and condescension with which you treat us. The encouragement you give to our weak endeavours, no less engages our affections, than your comprehensive knowledge and clear and accurate judgment command our reverence and esteem.

SUCH goodness charms all that approach and feel it; and it was with universal joy we saw Your LORDSHIP's firmness to the present Establishment, and great services to your Country, distinguished lately by an accession of honour from His Majesty, whose wisdom in conferring his favours has eminently appeared, by the many signal benefits the Nation has received from those who have the honour to serve him. I am with greatest respect,

MY LORD,
Your LORDSHIP's
Most obliged,
and most Humble Servant;

WILLIAM HAWKINS.

THE

THE
AUTHOR'S PREFACE.

NOTHING is more common than to hear those who have taken only a superficial view of the Crown-Law, charge it with numberless hardships and undistinguishing rigor; whereas those, who have more fully examined it, agree that it wants nothing to make it admired, for clemency and equity, as well as justice, but to be understood. It is so agreeable to reason, that even those who suffer by it, cannot charge it with injustice; so adapted to the common good, as to suffer no folly to go unpunished, which that requires to be restrained; and yet so tender of the infirmities of human nature, as never to refuse an indulgence, where the safety of the public will bear it: it gives the prince no power, but of doing good, and restrains the people from no liberty, but of doing evil.

It would be needless therefore to say any thing of the usefulness of this Treatise, could I be so happy as any way to come up to the design of it, which was to vindicate the justice and reasonableness of the laws concerning criminal matters, and to reduce them into as clear a method, and explain them in as familiar a manner, as the nature of the thing will bear.

HAD any of the great men, who formerly have written on this subject, gone through the whole law relating to it, all farther attempts of this kind had been unnecessary. The

THE AUTHOR'S PREFACE.

Treatise published under the name of SIR MATTHEW HALE, is indeed very useful, and written in a clear method, and with great learning and judgment; but it is certainly very imperfect in the whole, and seems to be only a model or plan of a work of this kind, which is said to have been intended by him.

SIR EDWARD COKE's Third Institute is also a Treatise of great learning, and not unworthy of the hand that produced it; but yet it seems by no means a compleat work, many considerable heads being either wholly omitted in it, or barely touched upon.

THE Treatise of SIR WILL. STAUNFORD seems to be writ with great judgement, but he takes in a very small compass, scarce mentioning any offences under felonies.

As for the Treatises of LAMBARD, CROMPTON, PULTON, and DALTON, they having an eye chiefly to the direction of justices of peace, and treating of the Crown-Law no farther than as it concerns them, are far from being compleat systems of it.

UPON the whole, I apprehend that none of the Authors before mentioned were so perfect, but that, by reducing all the laws relating to this subject under one general scheme, they might generally be understood with much less difficulty than they have hitherto been. This it was induced me to write on this subject, and I hope to finish the whole in Two Books; proposing in this First to shew the nature of criminal offences; and in the Second, the manner of bringing offenders to punishment.

P R E F A C E

TO THE

THIRD EDITION.

IN this Edition, abstracts of the Statutes made since the Author wrote relating to the subject of this Treatise, have been added. Care has also been taken to make additional references to the Reports published since our Author finished this Work, and to SIR MATTHEW HALE's *Historia Placitorum Coronæ*. Such references as only tend to confirm what is advanced in the text are thrown into the margin; but where new points or differences seemed to occur, it was thought proper to place them, together with the abstracts of the Statutes, by way of addition at the end of each Book; by which means the learned SERJEANT's Work is kept unmixed with any thing of the Editor's, and the pages of this Edition are made to correspond with those of the former, so that references to our Author from the modern books may be turned to with equal ease as before.

G. L. SCOTT.

P R E F A C E

TO THE

FOURTH EDITION.

THE same method has been observed in this Edition as by the above G. L. SCOTT, in referring not only to the Statutes, but also to the later Reports, *viz.* LORD RAYMOND'S, SIR JOHN STRANGE'S, and other Authors of the best authority, brought down to the present time.

P R E F A C E

TO THE

FIFTH EDITION.

THIS Edition is improved with Extracts from the late MR. J. FOSTER'S *Crown Law*; *Cases Tempore HARDWICKE, Ch. J.*; MASTER BURROW'S and MR. SERJEANT WILSON'S *Reports*; MR. J. BLACKSTONE'S *Commentaries*; and from the *Statutes*, to 10. Geo. 3. inclusive.

A N
A C C O U N T
OF THE
AUTHORS REFERRED TO IN THIS WORK.

A.

A Leyn
And.
Aff.
Atk.

A Leyn's Reports.
*A*nderfon's Reports, first and second Part.
The Book of Affixes.
Atkyns' Reports.

B.

B. R. H.
Bac. Abr.
Bar. K. B.
Barr.
Barrow
Benloe
Bl. Com.
Brac. Bracton
Bridg.
Bro.
Bul.
Bur. J.
Burr.
Brown
Bull. N. P.

Cases in the time of Lord Hardwicke.
Bacon's Abridgment.
Barnardiston's Reports in the King's Bench.
Barrington on the Statutes.
Barrow's Supremacy.
Benloe's Reports.
Blackstone's Commentaries, by Edw. Christian, Esq.
Braetton, De Legibus & Consuetudinibus Angliæ.
Bridgman's Reports.
Brook's Abridgment.
Bulstrode's Reports.
Burn's Justice.
Sir James Burrow's Reports.
Brown's Cases in Chancery.
Introduction to the Law of Nisi Prius.

C.

Carth.
Cas. C. L.
Cas. in Parl.
Caw. Cawley
Comm.
Com. Dig.
Co.
Co. Lit.
Comb.
C. Eliz.
C. Jac.
C. Car.
Crom.
Cowp.

Carthew's Reports.
Cases in Crown Law.
Sir Bartholomew Shower's Cases in Parliament.
Cawley's Law against Recusants.
Blackstone's Commentaries.
Comyn's Digest.
Sir Edward Coke's Reports.
Sir Edward Coke's Commentary upon Littleton.
Comberbach's Reports.
Croke's Reports for the reign of Queen Elizabeth.
Croke's Reports for the reign of King James the First.
Croke's Reports for the reign of King Charles the First.
Crompton's Office of a Justice of Peace, printed in the year 1606.
Cowper's Reports.

AUTHORS REFERRED TO.

D.

Dalif.	<i>Dalison's Reports.</i>
Dalt.	<i>Dalton's Country Justice, printed in the year 1655.</i>
Danv. Abr.	<i>D'Anvers's Abridgment.</i>
Dav. Davis	<i>Davis's Reports.</i>
Dy. Dyer	<i>Dyer's Reports, by John Vaillant, Esq.</i>
Dougl.	<i>Douglas's Reports.</i>
D. & E. Durnf. & East	<i>The Term Reports, by Charles Durnford and Edward Hyde East, Esquires.</i>

E.

Espin. Dig.	<i>A Digest of the Law of Actions and Trial, by Isaac Espinasse, Esq.</i>
Espin. N. P.	<i>Cases argued and ruled at Nisi Prius, a periodical work, commencing from Easter Term 33. Geo. 3. by Isaac Espinasse, Esq.</i>

F.

Far.	<i>Farresley's Reports.</i>
F. N. B.	<i>Fitzherbert's Natura Brevium.</i>
Fitz.	<i>Fitzherbert's Abridgment.</i>
Fitzg.	<i>Fitzgibbon's Reports.</i>
Flet.	<i>Ficta.</i>
Fof.	<i>Foster's Reports and Discourses upon Crown Law.</i>

G.

Gibf. Gibson	<i>Gibson's Codex Juris Ecclesiastici Anglicani.</i>
Godb.	<i>Godbolt's Reports.</i>

H.

Hale C. L.	<i>Hale's Common Law, by Charles Runnington, Esq.</i>
1. Hale	<i>Hale's Historia Placitorum Coronæ.</i>
2. Hale	<i>Hale's Reports.</i>
Hard.	<i>Hardes's Reports.</i>
H. Bl. Rep.	<i>Henry Blackstone's Reports of Cases in the Common Pleas.</i>
Hedl.	<i>Hedley's Reports.</i>
Hob.	<i>Hobart's Reports.</i>
Hutt.	<i>Hutton's Reports.</i>

J.

1. Jones	<i>Sir William Jones's Reports.</i>
2. Jones	<i>Sir Thomas Jones's Reports.</i>
1. Inst.	<i>Coke upon Littleton.</i>
2. Inst.	<i>The second Part of Coke's Institutes.</i>
3. Inst.	<i>The third Part of Coke's Institutes.</i>
4. Inst.	<i>The fourth Part of Coke's Institutes.</i>

AUTHORS REFERRED TO.

K.

Keb.	<i>Keble's Reports.</i>
Keil.	<i>Keilway's Reports.</i>
Kely.	<i>Kelyng's Reports.</i>
Kitch.	<i>Kitchin, of Courts Leet and Baron.</i>
Kyd on Cor.	<i>The Law of Corporations, by Stewart Kyd, Esq.</i>

L.

Lam. Lamb.	<i>Lambard's Office of Justices of Peace, printed in the year 1614,</i>
Lane	<i>Lane's Reports.</i>
Latch	<i>Latch's Reports.</i>
Leon.	<i>Leonard's Reports.</i>
Lev.	<i>Levinz's Reports.</i>
Litt.	<i>Littleton's Reports.</i>
Ld. Raym.	<i>Lord Raymond's Reports.</i>

M.

Mar.	<i>March's Reports.</i>
Mod.	<i>Modern Reports.</i>
Mo.	<i>Moore's Reports.</i>
MS.	<i>Manuscript Cases never before published.</i>

N.

New Abr.	<i>New Abridgment of the Law.</i>
Noy	<i>Noy's Reports.</i>

O.

O. B.	<i>Sessions Papers of the Old Bailey,</i>
Ow. Owen	<i>Owen's Reports.</i>

P.

Pal. Palm.	<i>Palmer's Reports.</i>
Parsons	<i>Parsons against Sir Edward Coke's fifth Report.</i>
P. Will.	<i>Pecre Williams' Reports.</i>
Pl. Com.	<i>Plowden's Commentaries.</i>
Po. Poph.	<i>Popham's Reports.</i>
Prin. P. L.	<i>Eden's Principles of Penal Law.</i>
Pult.	<i>Pulton, De Pace Regis et Regni.</i>

AUTHORS REFERRED TO.

R.

Ray, Rayni,	<i>Raymond's Reports.</i>
Reg.	<i>Register.</i>
R. A. R. Abr.	<i>Roll's Abridgment.</i>
Roll.	<i>Roll's Reports.</i>
Rush. Coll.	<i>Rushworth's Collections.</i>

S.

Salk.	<i>Salkeld's Reports.</i>
Saun.	<i>Saunders' Reports.</i>
Sav.	<i>Savil's Reports.</i>
Say.	<i>Sayer's Reports.</i>
Seld. Jan. Ang.	{ <i>Jani Anglorum Facies altera by Mr. Selden, trans-</i> <i>lated into English by Mr. Redman Westcot, and</i> <i>printed in the year 1682.</i>
Seld. Epin.	{ <i>England's Epinomis by Mr. Selden, printed in the</i> <i>year 1683.</i>
Show.	<i>Shower's Reports.</i>
Sid.	<i>Siderfin's Reports.</i>
Skin.	<i>Skinner's Reports.</i>
St. Tr.	<i>State Trials.</i>
Str.	<i>Strange's Reports.</i>
Sum.	<i>Hale's Summary of the Pleas of the Crown.</i>
S. P. C.	<i>Staundforde's Pleas of the Crown.</i>

T.

Thelo.	<i>Thelool's Digest of Writs.</i>
Trem.	<i>Tremaine's Pleas of the Crown.</i>
Term Rep.	<i>The Term Reports.</i>

V.

Vaugh.	<i>Vaughan's Reports.</i>
Vent.	<i>Ventris's Reports.</i>

W.

Watf. Watson	<i>Watson's Clergyman's Law, folio edition.</i>
Win. Winch	<i>Winch's Reports.</i>
Will.	<i>Wilson's Reports.</i>
Wood's Inf.	<i>Wood's New Institute of the Imperial or Civil Law.</i>
Wood	<i>Wood's Institute of Common Law.</i>

Y.

Year Books.	
Yel.	<i>Yelverton's Reports.</i>

AN
ANALYSIS
OF
THE FIRST VOLUME
OF THE
PLEAS OF THE CROWN.

ALL persons whatsoever are liable to be punished as criminal offenders, unless they can excuse themselves, either,

1. In respect of their want of reason; or,
2. In respect of their subjection to the power of others, c. 1.

Offences, considered in relation to the persons against whom they are committed, are either,

1. Such as are more immediately against God; or,
2. Such as are more immediately against man.

Offences more immediately against God, are either by common law or by statute.

Those at common law are either capital, or not capital.

The capital are of three kinds:

1. Heresy, c. 2.
2. Witchcraft, c. 3.
3. Sodomy, c. 4.

Those not capital are either by common law or statute.

Those by common law are of five kinds:

1. Blasphemies against God, c. 5. f. 1.
2. Scoffing at the scriptures, c. 5. f. 2.
3. Impositions in religion, c. 5. f. 3.
4. Open lewdness grossly scandalous, c. 5. f. 4.
5. Seditious words against the established religion, c. 5. f. 6.

Those by statute are two-fold:

1. Such as are against religion in general.
2. Such as are against the established church.

Those against religion in general are of four kinds:

1. Profanations of the Lord's day, c. 6. f. 1, 2, 3.
2. Profane swearing and cursing, c. 6. f. 4.
3. Drunkenness, c. 6. f. 5.
4. Reviling the Lord's Supper, c. 6. f. 6.

Those

AN ANALYSIS OF VOLUME I.

Those against the established church are three-fold :

1. Such as concern all persons in general.
2. Such as more immediately relate to those of the popish religion.
3. Such as more immediately regard protestant dissenters, c. 16.

Those which concern all persons in general, are either,

1. Against the common prayer, c. 7. or,
2. In accepting or holding an office without due conformity to the church, c. 8. or,
3. In teaching school without conforming to the church, c. 9. or,
4. In not coming to church, c. 10, 11.

Those relating more immediately to persons of the popish religion, are of four kinds :

1. Popish recusancy, c. 12.
2. The offence of saying or hearing of mass, or other popish service, c. 13.
3. The offence of not making a declaration against popery, c. 14.
4. The offence of promoting or encouraging the popish religion; either,
 1. In giving or receiving popish education, c. 15. f. 1, 2, 3.
 2. In professing the popish religion, c. 15. from f. 4 to f. 15.
 3. In buying or selling popish books, c. 15. f. 15.

Offences more immediately against man, are either more immediately against the king, or more immediately against the subject.

Those more particularly against the king, are either capital or not capital.

The capital are either,

1. High treason; or,
2. Felonies.

High treason is either,

1. Such as is within 25. E. 3. and other statutes grounded upon it, and explaining it; or,
2. Such as depends upon subsequent statutes.

Of treason within 25. Ed. 3. there are four species :

1. That which immediately concerns the king, his wife or children, c. 17. f. 3, 4, &c.
2. That which concerns his office in the administration of justice, c. 17. f. 46.
3. That which concerns his seal, c. 17. f. 48.
4. That which concerns his coin, c. 17. f. 54.

Of high treason depending on subsequent statutes, there are three species :

1. Offences in upholding or favouring the power of the pope.
2. Offences against the protestant succession, c. 17. f. 85.
3. Offences in lifting men without the king's licence, c. 17. f. 86.

Of offences in upholding or favouring the power of the pope, there are five species :

1. Extolling the pope's power, c. 17. f. 72.
2. Putting in ure popish bulls, c. 17. f. 75.
3. Perverting others, or being perverted to popery, c. 17. f. 76.
4. Receiving popish orders or education in popish seminaries, and not submitting, &c. c. 17. f. 79.
5. Refusing a second tender of the oaths, c. 17. f. 84.

Felonies

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Felonies more immediately against the king, are of five kinds :

1. Offences relating to the coin or bullion.
2. Offences against the king's council, c. 18. f. 8.
3. The offence of passing beyond sea, to serve a foreign prince, c. 18. f. 10.
4. The offence of embezzling the king's armour c. 18. f. 12.
5. The offence of relieving a popish priest, c. 18. f. 14.

Of felony relating to the coin or bullion, there are three species :

1. The offence of debasing it, c. 18. f. 1.
2. The offence of unlawfully diminishing it, c. 18. f. 2.
3. The offence of endeavouring by extraordinary means to increase it, c. 18. f. 7.

Of offences more immediately against the king, not capital, there are two kinds :

1. *Præmunire*.
2. Misprision.

Offences coming under the notion of *præmunire*, are either,

1. Against the prerogative of the crown ; or,
2. Against the authority of the king and parliament, c. 19. f. 44.

Of offences of this kind against the prerogative of the crown, there are nine species :

1. Making use of papal bulls, c. 19. f. 12.
2. Derogating from the king's common-law courts, c. 19. f. 14.
3. Appcaling to Rome from any of the king's courts, c. 19. f. 20.

4. Exercising the jurisdiction of a suffragan, without the appointment of the bishop of the diocese, c. 19. f. 21.
5. Refusing to elect or consecrate the person nominated by the king to a bishoprick, c. 19. f. 22.
6. Maintaining the pope's power, c. 19. f. 23.
7. Bringing in *Agnus Dei's*, c. 19. f. 24.
8. Contributing to the maintenance of a popish seminary, c. 19. f. 26.
9. Refusing the oaths, c. 19. f. 27.

Misprisions more immediately against the king are either negative or positive.

The negative is commonly called misprision of treason, c. 20.

Positive misprisions of this kind either amount to misprision of treason, or do not.

Of such misprisions, amounting to misprisions of treason, there is only one species ; forging foreign coin not current here, c. 20. f. 7.

Of such misprisions not amounting to misprision of treason, there are four kinds :

1. Contempts against the king's palace or courts of justice, c. 21.
2. Contempts against his prerogative, c. 22.
3. Contempts against his person, or government, c. 23.
4. Contempts against his title, c. 24.

Of contempts against the king's prerogative, there are three species :

1. Refusing to assist him, for the good of the public, c. 22. f. 2.
2. Pre-

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2. Preferring the interests of a foreign prince to that of our own, c. 22. f. 3.
3. Disobeying the king's lawful commands or prohibition, c. 22. f. 4.

Of contempts against the king's person or government, there are six kinds :

1. Charging the government with oppression or weak administration, c. 23. f. 2.
2. Doing an act which impliedly encourages rebellion, c. 23. f. 4.
3. Endeavouring to frighten the king into a change of his measures, c. 23. f. 4.
4. Spreading false rumours concerning the king's intentions, c. 23. f. 5.
5. Charging him with a breach of his coronation oath, c. 23. f. 6.
6. Speaking contemptuously of him, c. 23. f. 7.

Of contempts against the king's title, there are two kinds :

1. Denying his title, c. 24. f. 1.
2. Refusing to take the oaths required by law for the support of his government.

Of offences in refusing to take such oaths, there are two kinds :

1. The offence of refusing the oath required by common law, c. 24. f. 3.
2. The offence of refusing the oaths required by statute.

Of offences in refusing the oaths required by statute, there are two kinds :

1. The offence of refusing the oaths of allegiance and supremacy, c. 24. f. 4.
2. The offence of refusing the oath of abjuration, c. 24. f. 5.

Offences more immediately against the subject, are either capital or not capital.

The capital are either by the common law or by statute.

Those by the common law are committed either,

1. Against the life of a man ; or,
2. Against his goods ; or,
3. Against his habitation ; or,
4. Against public justice.

Those against the life of a man, are either,

1. Casual, not being occasioned by the default or procurement of any man, c. 26. or,
2. Such as come under the notion of homicide, being occasioned by a man, c. 26. 1.

Of homicides there are two kinds :

1. Such as is committed against a man's own life, c. 27.
2. Such as is committed against the life of another.

Of homicide against the life of another, there be two kinds :

1. Such as amounts not to felony.
2. Such as amounts to felony.

Of such homicide not amounting to felony, there are two kinds :

1. Justifiable.
2. Excusable.

Justifiable homicide is either of a public or a private nature.

That of a public nature is of two kinds :

1. Such as happens in the due execution, c. 28. f. 4. and,
2. Such as happens in the due advancement of public justice.

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Of the latter there are two kinds :
 1. Such as happens in criminal,
 c. 28. f. 11. and
 2. Such as happens in civil causes,
 c. 28. f. 17.

Of justifiable homicide of a private nature, there are two kinds :

1. Such as happens in killing a wrong-doer, c. 28. f. 71.
2. Such as happens in killing an innocent person, c. 28. f. 26.

Of excusable homicide there are two kinds :

1. Homicide *per infortunium*, c. 29. f. 1.
2. Homicide *se defendendo*, c. 29. f. 12.

Homicide against the life of another, amounting to felony, is either with or without malice.

That which is without malice is called manslaughter or chance-medley, c. 20.

Of such homicide with malice there are two kinds :

1. Murder, c. 31.
2. Petit-treason, c. 32.

Of murder there are two kinds :

1. Such as is done with express malice.
2. Such as is done with implied malice.

Of murder done with express malice, there are three kinds :

1. Such as happens in duelling, c. 31. f. 21.
2. Such as happens in killing another without any provocation, or but upon a slight one, c. 31. f. 32.
3. Such as happens in killing one whom the person killing intended to hurt in a less degree, c. 31. f. 28.

Murder done with implied malice generally happens in the following instances :

1. Where the principal intention is to commit another felony, c. 31. f. 41.
2. Where the principal design is to commit a bare breach of the peace, not intended against the person of him who happens to be slain, c. 31. f. 46.
3. Where the chief motive is to assist a third person, c. 31. f. 49.
4. Where the direct design is to escape from an arrest, c. 31. f. 55.
5. Where the principal purpose is to usurp an illegal authority, c. 31. f. 59.
6. Where no mischief is intended at all, c. 31. f. 61.

Of petit treason there are three kinds, c. 32.

1. Where a servant kills his master.
2. Where a wife kills her husband.
3. Where an ecclesiastical person kills his prelate.

Of capital offences at common law against the goods of another, there are two kinds :

1. Simple larceny.
2. Mix'd larceny.

Of simple larceny there are also two kinds :

1. Grand larceny, c. 32. f. 1.
2. Petit larceny, c. 32. f. 31.

Mix'd larceny is either from the person of a man, or from his house, c. 36.

Of mix'd larceny from the person, there are two kinds :

1. Robbery, c. 34.
2. Larceny from the person, c. 35.

Also

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Also there is another offence of this nature, called piracy, c. 37.

Capital offences at common law against the habitation of a man, are of two kinds:

1. Burglary, c. 38.
2. Arson, c. 39.

Offences more immediately against the subject, made capital by statute, are such as are committed,

I. Against women.

1. By rape.
2. By forcible marriage.
3. By seduction.

II. Against marriage.

1. By clandestine marriage.
2. By bigamy.

III. By breach of trust.

1. By larceny from lodgings.
2. By menial servants.
3. By bank clerks.
4. By clerks in the post-office.

IV. By stealing *choses in action*.

1. By securities for money.

V. Against freehold property.

1. By robbing orchards.
2. By damaging trees.
3. By stealing shrubs, &c.
4. By stealing vegetables.
5. By stealing madder roots.
6. By robbing lead-mines.
7. By stealing lead, iron, copper, brass, or bell-metal fixtures.

VI. Against animals.

1. By stealing rabbits.
2. By deer-stealing.
3. By stealing fish.

VII. Against public justice.

1. By altering records.
2. By personating bail.
3. By dures in gaolers.

4. By returning from transportation.

5. By taking reward to restore stolen goods.

6. By advertising a reward.

7. By buying stolen goods.

8. By rescuing the body of an executed murderer.

9. By incorrigible rogues.

10. By persons convicted of perjury escaping.

VIII. Against the public revenue.

1. By owling.
2. By smuggling.
3. By fraudulent permits.
4. By transposing stamps.

IX. Against public trade.

1. By fraudulent bankruptcy.
2. By insolvent debtors.
3. By slaughtering horses.

X. Against public funds.

1. By personating a proprietor.

XI. Against public credit.

1. By forging franks.
2. Testimonial of justices.
3. Lottery tickets.
4. Post fines.
5. Marriage registers.
6. Stamps.
7. Hand of Accountant-General.
8. Seal of South-Sea Company.
9. East India bonds.
10. Names of proprietors of stock.
11. Documents relating to Admiralty.
12. Names of seamen.
13. Names of seamen on board privateers.
14. Names of Greenwich pensioners.
15. Policies of insurance.
16. Bank notes.
17. Instrument for payment of money or delivery of goods.

XII. Against

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XII. Against the public health.

1. Spreading the plague.
2. Neglecting quarantine.

XIII. Against the public peace.

1. By riot.
2. Threatening letters.
3. Mobs-trooping.
4. Hunting.
5. Pulling down turnpikes.
6. Destroying fences.
7. Injuring bridges.
8. Destroying banks, &c.

XIV. By malicious mischief.

1. Maiming cattle.
2. Burning.
3. Destroying mills.
4. Garments.
5. Cutting hop-binds.
6. Injuring collieries.

7. Breaking looms.

8. Destroying granaries; and
9. Knitting frames.

XV. Against the persons of individuals.

1. By maims.
2. By shooting at another.
3. By assaulting to rob.

XVI. Against ships and boats.

1. By destroying ships.
2. By furcharging boats.
3. By plundering wrecks.

XVII. By soldiers and marines.

1. Personating seamen.
2. Wandering as sailors.
3. Desertion.

XVIII. By purveyance.

ERRATA ET ADDENDA.

Page 15, after Sect. 8. read “ *See the statute 34. Geo. 3. c. 61. on the subject of Bakers being permitted to work on Sunday.* ”

Page 26, in margin, after 6. Geo. 3. c. 53.” read “ *and by 16. Geo. 2. c. 30. within six months after his admittance; &c.* ”

Page 113, Sect. 112. and the following sections, instead of “ 33. Geo. 3. c. ” read “ 33. Geo. 3. c. 27 ”

Page 142, note (3) after “ 31. Car. 2. ft. 2.” read “ *See vol. 2 page 232. foot. 5.* ”

Page 240, in margin, after “ *Post* ” read “ *page 258.* ”

A T R E A T I S E OF THE PLEAS OF THE CROWN.

BOOK THE FIRST.

CHAPTER THE FIRST.

OF THE PERSONS WHO MAY BE GUILTY.

THE guilt of offending against any law whatsoever, ^{1. Hale 15.} necessarily supposing a wilful disobedience, can never ^{4. Comm. 216.} justly be imputed to those who are either incapable of ^{Puff. b. 8. c. 3.} understanding it, or of conforming themselves to it. Therefore, before I come to the several kinds of offences, I shall shew what degrees of discretion and freedom are required in the commission of them. For the better understanding whereof, I shall consider what offenders are excusable.—**FIRST**, In respect of their want of reason.—**SECONDLY**, In respect of their subjection to the power of others.

SECT. 1. As to **THE FIRST POINT**, It is to be observed, **B. Cor. 61.** that those who are under a natural disability of distinguish- ^{170.} ing between good and evil, as (1) infants under the age of ^{Pult. 125, 126.} ^{Sum. 10. 28.} 43. ^{3. Inst. 4.} ^{Dalt. c. 147.} ^{1. Hale 16.} ^{29. 515.} ^{Co. Lit. 24.} ^{4. Co. 124.} ^{Hob. 224.} ^{8. St. Tr. 322.}

(1) On the attainment of fourteen years of age, the criminal actions of infants are subject to the same modes of construction as those of the rest of society; for the law presumes the human mind has acquired at this period a complete sense of right and wrong. **Dr. & St. c. 26.** **Co. Lit. 79.** **171.** **247.** **Dalt. 476.** **505.**—During the interval between the age of fourteen years and that of seven, the mind is *primâ facie* presumed to be unacquainted with guilt. And these presumptions, entertained in favour of innocence, accumulate in an inverse proportion with the decrease and tenderness of the offender's years. **1. Hale 25.** **27.** From this supposed imbecility of mind, the protective humanity of the law will not, without anxious circumspection, permit an infant to be convicted on his own confession. **C. Jac. 466.** **1. Hale 24.** **Fof. 70.** Yet if it appear by strong and pregnant evidence and circumstances that he was perfectly conscious of the nature and malignity of the crime, the *verdict of a jury* may find him guilty, and judgment of death may be given against him. **1. Hale 20.** **25.** **434.** **B. Cor. 133.** **4. Comm. 23.** **Fof. 71.** **O. B. 1784. p. 971.** For *malitia supplet aetatem*; and the capacity of contracting guilt is measured more by the apparent strength of the offender's understanding than by years and days. **B. Cor. 74.** **4. Comm. 23.** But within the age of *seven years* an infant cannot be punished for any capital offence, whatever circumstances of a mischievous discretion may appear; for *ex præsumptione juris* he cannot have discretion; and against this presumption no averment shall be admitted. **Mirr. c. 4. l. 16.** **Plowd. 19.** **1. Hale 20.** **Fof. 349.** **4. Comm. 23.** **Cowp. 222.** **223.** Therefore if a *child* under this age steal the goods or fire the house of another, *he* cannot be punished for either the larceny or the arson. **1. Hale 19.** **514.** **Fof. 113.** **349.** But see post. ch. 1. sect. 8.

discretion, ideots, and lunaticks (2), are not punishable by any criminal prosecution whatsoever (3).

(2) **IDEOTCY** is a defect of understanding from the moment of birth; Co. Litt. 247. F. N. B. 530. 2. Comm. 304; a person therefore *born* deaf and dumb is *primâ facie* within this definition. B. Cor. 217. 1. Hale 34.—**LUNACY** is a partial derangement of the intellectual faculties, the senses returning at uncertain intervals; the offender therefore is only protected from punishment for acts done during the prevalence of his disorder. 1. Hale 31. 4. Comm. 24.—**MADNESS** is a total alienation of the mind. 1. Hale 30. 4. Co. 124. These defects, whether permanent or temporary, must be unequivocal and plain, not an idle frantic humour, or unaccountable mode of action, but an absolute dispossession of the free and natural agency of the human mind. 8. St. Tr. 322. 1. Hale c. 4.

(3) But by 17. Geo. 2. c. 5. s. 20. a dangerous lunatick may be kept in prison till he recover his senses. And the directions of this statute seem agreeable to the ancient common law. Pulton 6. 22. Ass. pl. 56. But it only extends to *vagrant lunaticks*, and not to persons of rank and condition, whose relations can take care of them by applying to the court of chancery. 2. Atk. 52. See post. "Vagrants."

2. Roll. 324. *Sec. 2.* Indeed it was anciently holden, in respect of that high regard which the law has for the safety of the king's person, that a madman might be punished as a traitor (4) for killing or offering to kill the king; but this is contradicted by the later opinions.
F. Cor. 351. 1. Hale 36, 37. 4. Comm. 25.—(4) See 33. II. 8. c. 20. repealed by 1. & 2. P. & M. c. 20. 2. State Trials 7.
Reg. 309.
Sum. 43.
3. Inst. 6.
Co. Lit. 247.
4. Co. 124.

26. Ass. 27. *Sec. 3.* And it seems agreed at this day, that if one who has committed a capital offence become *non-compos* before conviction, he shall not be arraigned; and if after conviction, that he shall not be executed.
Sav. 57.
Sum. 10.
1. And. 107.
109.
3. Inst. 4. 6. 1. Hale 34, 35. 4. St. Tr. 205. 8. St. Tr. 285. 4. Comm. 24, 25. 395.

1. And. 107. *Sec. 4.* And, by the common law, if it be doubtful whether a criminal who at his trial is in appearance a lunatick, be such in truth or not, it shall be tried by an inquest of office, to be returned by the sheriff of the county wherein the court sits (5); and if it be found by them that the party only feign himself mad, and he still refuse to answer, he shall be dealt with as one that stands *mute* (6).
1. Sav. 50. 56.
1. Hale 35.

(6) For the consequences of *standing mute*, see Bk. II. c. 13. s. 9.

(5) It may be tried either by the inspection of the court, 1. Hale 33. Tr. p. Pais 14. Fitz. N. B. 517.—by evidence given to the jury, who are charged to try the indictment, 3. Bac. Abr. 81. 1. Hale 33. 35, 36. Savil 50. 1. And. 107.—or, being a collateral issue, the fact may be pleaded and replied to *ore tenus*, and a *verdict* awarded, returnable *instantly*, in the nature of an inquest of office. Fost. 26. Kel. 13. 1. Lev. 61. 1. Sid. 72. 4. Comm. Appen. f. 3. And this method, in cases of importance, doubt, or difficulty, the court will, in prudence and discretion, adopt. 1. Hale 35. Sav. 56. 1. And. 154.

2. R. Abr. 547. *Sec. 5.* And if one who wants discretion commit a trespass against the person or possession of another, he shall be compelled in a civil action to give satisfaction for the damage.
B. Cor. 6.
Hob. 134.
Co. Lit. 247.
289. Plow.
364. 2. Inst. 284. 414. Pop. 141. Brownl. 197. Noy 129. C. Jac. 467. 1. Hale 15, 16. 20. 3. Bac. Ab. 131. 2. Comm. 291. 4. Comm. 22.

Sec. 6. And he who is guilty of any crime whatever through his voluntary drunkenness, shall be punished for it as much as if he had been sober.

Co. Litt. 247.
1. Hale 32.
Plov. 19.
4. Co. 125.

Dalt. c. 148. 4. Comm. 26. 8. St. Tr. 285.

Sec. 7. Also he who incites a madman to do a murder or other crime, is a principal offender, and as much punishable as if he had done it himself.

Kely. 53.
Dalt. p. 533.
1. Hale 617.

Sec. 8. And if it appear by the circumstances, that an infant under the age of discretion could distinguish between good and evil, as if one of the age of nine or ten years kill another, and hide the body, or make excuses, or hide himself, he may be convicted and condemned, and forfeit, &c. as much as if he were of full age. But in such a case the judges will in prudence respite the execution, in order to get a pardon: and it is said, that if an infant, apparently wanting discretion, be indicted and found guilty of felony, the justices themselves may dismiss him without a pardon, &c.—† But this authority to dismiss him must be understood (a) of a reprieve before judgment, or that the jury find the prisoner within the age of seven years, or not of sufficient discretion to judge between good and evil.

F. Cor. 113.
129.
12. Aff. 30.
B. Cor. 6. 61.
133. 136.
S. P. C. 16.
35. H. 6. 11.
1. Hale 434.
569, 570.
Plov. 19.
Pult. 125.
Foster 70.

Sec. 9. As to THE SECOND POINT, viz. How far those are to be excused who are under the power of others:—A *feme covert* is so much favoured in respect of that power and authority which her husband has over her, that she shall not suffer any punishment for committing a bare theft (8) in company with, or by coercion of, her husband.

Leges Inæ 58.
S. P. C. 16. 42.
27. Aff. 40.
Sum. 65.
Kely. 31.
1. Hale 45.
516. B. Cor.
16. 108. Dalt.

134. 157. 4. Comm. 28.

(8) This exemption extends to burglary, Kely. 31. F. Cor. 199. and seemingly to robbery, as an offence of a nature certainly not *more* heinous. The reason of this rule is said to be, “because the wife cannot know what property her husband may claim in the goods taken.” 10. Mod. 63. If this be the true principle, the cases of robbery and burglary are in some measure distinguishable upon this subject; for in burglary, the absence or presence of the party is immaterial; but in robbery, presence is an unavoidable and essential ingredient to the crime, and affords to the wife an opportunity of judging in what *sort of right* the goods are taken.—Vide *infra*, sect. 11.

Sec. 10. Neither shall she be deemed accessary to a felony for receiving her husband who has been guilty of it (9), as her husband shall be for receiving her.

2. Inst. 108.
Sum. 65.
1. Hale 44.

(9) Nor a principal, though the husband's offence be treason, for she is *sub potestate viri*, and bound to receive him. Neither is she affected by receiving, jointly with her husband, any other offender. 1. Hale 48. For she cannot be admitted as a witness to discover even collaterally her husband's guilt. Brownl. 47. Dalt. 540. 1. Hale 301. and Davis v. Dinwoody, 4. Term Rep. 678.

OF THE PERSONS WHO MAY BE GUILTY Bk. I.

Sum. 65. 66. *Sett.* 11. But if she commit a theft of her own voluntary act, or by the bare command of her husband, or be guilty of treason, murder, or robbery, in company with, or by coercion of, her husband (10), she is punishable as much as if she were sole.

1. Hale 45.
 516. Lucas 63. Kely. 31. S. P. C. 10. 142. 2. Comm. c. 29. 4. Comm. 29.

(10) Or receive stolen goods of her own separate act, without the privity of her husband; or if he, knowing thereof, leave the house and forsake her company, she alone shall be guilty, as accessary. 22. Aff. 40. Dalt. 157. for the coercion which is supposed to be conveyed by the command or presence of the husband, is only a presumption of law, and like other presumptions may be repelled. 1. Hale 516.—In treason, no plea of coverture shall excuse the wife; no presumption of her husband's coercion shall extenuate her guilt, for he has no right to that obedience from a wife which he, as a subject, has forgotten to pay. In murder also this privilege is denied, because the offence is repugnant to the laws of nature, which shall never be contravened by the refinements of civil society. 4. Comm. 29.

2. Roll. 39. *Sett.* 12. Also a wife may be indicted together with her husband, and condemned to the pillory with him for keeping a bawdy-house; for this is an offence as to the government of the house, in which the wife has a principal share; and also such an offence as may generally be presumed to be managed by the intrigues of her sex.

3. Keb. 34.
 1. Sid. 410.
 Hob. 95.
 3. Salk. 384.

9. Co. 72. *Sett.* 13. And generally a *feme covert* shall answer, as much as if she were sole, for any offence not capital, against the common law, or statute: and, if it be of such a nature that it may be committed by her alone, without the concurrence of the husband, she may be punished for it without the husband, by way of indictment; which being a proceeding grounded merely on the breach of the law, the husband shall not be included in it for an offence to which he is no way privy. And if a woman bring a malicious appeal for the death of her husband, known by her to be alive, she may be imprisoned for the false appeal, till she make fine to the king, and the husband shall go at large. But if a wife incur the forfeiture of a penal statute, the husband may be made a party to an action or information for the same (as he may be generally to any suit for a cause of action given by his wife), and shall be liable to answer what shall be recovered thereon (11).

8. Hen. 4. 17.
 F. Cor. 73.
 B. Imp. 103.
 Bac. Ab. 294.
 Noy 103.
 Sav. 25.
 1. Roll. 93.

(11) She may be indicted alone for a riot. Dalt. 447. For selling gin against the injunctions of the 9. Geo. 2. c. 23. Str. 1120. For recusancy. Str. 1120. Hob. 96. 1. Sid. 410. 11. Co. 64. Sav. 25. For being a common scold, *communis rixatrix*. 6. Mo. 213. 239. For assault and battery. Salk. 384. For forestalling. Sid. 410. For a forcible entry. Post. 147. For keeping a gaming-house. 10. Mod. 335. Keeping a bawdy-house, if the husband do not live with her. 1. Bac. Abr. 294. For trespass or slander. Keilw. 61. R. Abr. 251. Leon. 122.

Sett. 14. Neither a son nor a servant are excused the commission of any crime, whether capital or not capital, by the command or coercion of the father or master. Sum. 66. Moor 813. Dalt. 504. 1. Hale 44.

THERE are other exemptions from punishment than those which have been mentioned in this chapter.—FIRST, By casualty and misfortune: thus if in the execution of a lawful act an unintended death or maim ensue, the party stands excused from all guilt. B. Cor. 229. 22. Aff. 71. 1. Hale 39. Kel. 123. 4. Co. 124. 4. Com. 27. —SECONDLY, By ignorance or mistake; as when a man, intending to do a lawful act, does that which is unlawful. Jones 15. C. Car. 538. But this must be an ignorance or mistake in fact, and not in law, for *ignorantia juris quod quisque tenetur scire neminem excusat*. Plow. 343. 1. Hale 42. 4. Comm. 27.—THIRDLY, By compulsion or necessity; as where the act proceeds from the lawful coercion of another, or arises from circumstances of unavoidable constraint, or the impulse of a just and well-grounded apprehension of death. 1. Hale 50. 54. Plow. 18. 3. Inst. 10. Grotius Bk. II. c. 2. f. 6. Reg. 88. F. N. B. 177. 1. Comm. 131. 4. Comm. 30. And all these circumstances of accident, necessity, or infirmity, must be satisfactorily proved by the prisoner, unless they arise out of the evidence adduced against him. Fos. 255. Ld. Ray. 1493. Str. 773. 1. Hale 34.

CHAPTER THE SECOND.

OF HERESY.

OFFENCES considered in relation to the persons against whom they are committed, are either such as are more immediately against GOD, or, such as are more immediately against MAN.—The capital offences more immediately against God are, by common law, of three kinds: Heresy. Witchcraft. Sodomy.

Concerning HERESY, I shall consider, 1. What it is.
2. By whom it is cognizable. 3. How it is punishable.

4. Comm. 47.
2. Burn. E.
L. 258.—260.
1. Hale 383, to
410.
3. Inst. 40.
4. Comm. 48.
4. Com. Dig.
8vo edit. 342.
to 347.
(a) Repealed
by 16. Car. 1.
c. 11. f. 3.
3. Inst. 40.
B. Heresy
passim.
2 R. Abr. 226.
F. N. B. 269.
Sum. 5.
1. Hale 392.
Gib. 401. 410.
12. Co. 56, 57.
53.
3. Inst. 40.
2. St. Tr. 275.

Seet. 1. As to THE FIRST POINT, It seems, that among protestants, heresy is taken to be a false opinion, repugnant to some point of doctrine clearly revealed in scripture, and either absolutely essential to the Christian faith, or at least of most high importance.

Seet. 2. But it is impossible to set down all the particular errors which may properly be called heretical, concerning which there are, and always have been, so many intricate disputes. However, the statute 1. Eliz. c. 1. f. 18. which erected the high-commission court (a), having restrained the same from adjudging any points to be heretical which have not been determined to be such, either by scripture, or by some one of the four first general councils, or by some other council, by express words of scripture, or by the parliament, with the assent of the convocation; it has been since generally holden, that these rules will be good directions to ecclesiastical courts in relation to heresy.

Seet. 3. As to THE SECOND POINT, viz. By whom heresy is cognizable. It is certain that the convocation may declare what opinions are heretical; but it hath been questioned of late, whether they have power at this day to convene and convict the heretick.

Seet. 4. However it is agreed, that every bishop may convict persons of heresy within his own diocese, and proceed by church censures against those who shall be convicted; but it is said, that no spiritual judge who is not a bishop, hath this power; and it has been questioned, whether a conviction before the ordinary be a sufficient foundation whereon to ground the writ *de hæretico comburendo*, as it is agreed that a conviction before the convocation was.

Seet. 5. By 24. Hen. 8. c. 9. the archbishop of either province may cite any person before him for heresy, if the
immediate

immediate ordinary either consent thereto, or do not his duty in punishing the same.

Seft. 6. But it is certain, that a man cannot be proceeded against at the common law, in a temporal court, merely for heresy; yet if, in maintenance of his errors, he set up conventicles, and raise factions, which may tend to the disturbance of the public peace, it seems that he may in this respect be fined and imprisoned, upon an indictment, &c. at the common law.

Seft. 7. Also a temporal judge may incidentally take notice, whether a tenet be heretical or not; as where one was committed by force of 2. Hen. 4. c. 5. for saying, that he was not bound by the law of God to pay tithes to the curate; and another for saying, that though he was excommunicated before man, yet he was not so before God; the temporal courts on an *habeas corpus* in the first case, and on an action of false imprisonment in the other, adjudged neither of the points to be heresy within that statute; for the king's courts will examine all things which are ordained by statute.

Seft. 8. Also in a *quare impedit*, if the bishop plead that he refused the clerk for heresy, it seems that he must set forth the particular point, that it may appear to be heretical, to the court wherein the action is brought; which having cognisance of the original cause, must by consequence have a power as to all incidental matters necessary for the determination of it; and, without knowing the very point alledged against the clerk, will not be able to give directions concerning it to the jury, who, if the party be dead, are to try the truth of the allegation.

Seft. 9. But if a man be proceeded against as an heretick in the spiritual court *pro salute animæ*, and think himself aggrieved, his proper remedy seems to be by appeal to a higher ecclesiastical court, and not to move for a *prohibition* from a temporal one, which, as it seems to be agreed, cannot regularly determine or discuss what shall be called heresy.

Seft. 10. As to THE THIRD POINT, *viz.* How heresy is punishable, there is no doubt but that at common law one convicted thereof, and refusing to abjure it, or falling into it again after he had abjured it, might be burnt by force of the writ *de hæretico comburendo*, which was grantable out of chancery upon a certificate of such conviction; but it is said, that he forfeited neither lands nor goods, because the proceedings against him were only *pro salute animæ*.

Seft. 11. But at this day the writ *de hæretico comburendo* is abolished by 29. Car. 2. c. 9. And all the old statutes which give a power to arrest or imprison persons for heresy,

27. H. 8. 14.
5. Co. 58.
Hob. 236.
3. Inst. 39.
12. Co. 56.
Finch. 219.
1. Salk. 135.

1. Hale 399.
3. Inst. 42.
1. Roll. 110.
2. Bulst. 309.

5. Co. 5.
1. And. 191.
1. Leon. 190.
3. Lev. 314.
1. Hale 407.

5. Co. 88.
27. H. 8. 14.

F. N. B. 269.
3. Inst. 43.
Dr. & St. 1. 3.
c. 29.

Sum. 4. 5.
Gilb. 353.
12. Co. 44.

heresy, or introduce forfeiture on that account, are repealed.

1. Salk. 293.
B. R. H. 314.

Sec. 12. Yet by the common law, an obstinate heretick being excommunicate, is still liable to be imprisoned by force of the writ *de excommunicato capiendo*, till he makes satisfaction to the church.

Penalty and disability for denying any one of the persons of the Holy Trinity to be God.

Sec. 13. And by 9. and 10. Will. 3. c. 32. " If any person having been educated in or having made profession of the Christian religion within this realm, shall be convicted in any of the courts of *Westminster*, or at the assizes, of denying any one of the Persons in the Holy Trinity to be God, or of maintaining that there are more Gods than one, or of denying the truth of the Christian religion, or the divine authority of the holy scriptures, he shall for the first offence be adjudged incapable of any office; and for the second, shall be disabled to sue any action, or to be a guardian, executor, or administrator; or to take by any legacy or deed of gift, or to bear any office civil or military, or benefice ecclesiastical, for ever, and shall also suffer imprisonment for three years, without bail or mainprize, from the time of such conviction."

3. Jac. 1. c. 21.

Information must be given within four days, and prosecution commenced within three months.

Sec. 14. But by 9. & 10. Will. 3. c. 32. f. 2. it is provided, " That no person shall be prosecuted by virtue of this act for any words spoken, unless the information of such words shall be given upon oath before a justice of the peace within *four days* after such words spoken; and the prosecution of such offence be within *three months* after such information."

But if the offender shall renounce his erroneous opinions, he shall be discharged.

Sec. 15. Also by 9. and 10. Will. 3. c. 32. f. 3. " Any person convicted of the aforesaid crimes shall, for the *first offence* (upon his acknowledgment and renunciation of such *erroneous opinions* within *four months* after conviction), be discharged from all penalties and disabilities incurred by such conviction."

CHAPTER THE THIRD,

OF WITCHCRAFT.

OFFENDERS of this nature are said to have been of three kinds,

CONJURERS, who by force of certain magick words endeavoured to raise the devil, and compel him to execute their commands. 3. Inst. 44.
Dalt. p. 513.
514.

WITCHES, who by way of friendly conference were said to bargain with an evil spirit to do what they desire of him.

SORCERERS or *Charmers*, who by the use of certain superstitious forms of words, or by means of images, or other odd representations of persons or things, &c. were said to produce strange effects above the ordinary course of nature.

Sec. 2. All these were anciently punished in the same manner as hereticks, by the writ *de hæretico comburendo*, after a sentence in the ecclesiastical court, and a relapse. And it is said also, that they might be condemned to the pillory, &c. upon an indictment at common law. 3. Inst. 44.
F. N. B. 269.
S. P. C. 38.
C. Eliz. 571.

Sec. 3. In the time of king Edward the third, one taken with the head and face of a dead man, and a book of forcery, was brought into the king's bench; but there being no indictment against him, he was sworn that from thenceforth he would not be a forcerer, and then delivered from prison, and the head was burnt at his charge: but this method seems to be obsolete at this day. 1. Hale 383.
45. Ed. 3. 17.
B. Cor. 15.
2. Keb. 719.

Sec. 4. By the statute 1. Jac. 1. c. 12. which was the only law in force against these offenders, they are divided into two degrees. Those in the first degree, and their accessaries before the fact, were to suffer as felons without clergy. By 33. Hen. c.
8. witchcraft
and forcery
were made fe-
lony without
clergy.—But accessaries after were entitled, 1. Hale 7.

Of these there were the four following species:

FIRST, "Such as shall use any invocation or conjuration of any evil spirit:" and such seem clearly to be within the law, though no spirit do actually appear. Sum. 6. 7.
4. Inst. 45. com.

SECONDLY, "Such as consult, covenant with, entertain, employ, feed, or reward any evil spirit to any intent:" and these were agreed to be within the statute, though nothing farther was done upon such consultation, &c.

THIRDLY,

1. Jon. 143. THIRDLY, "Such as take up any dead person's body, or (a) 'his offence is indictable as a misdemeanor common law, Lynn's Case, Cases in Cro. Law, 395. 2 Term Rep. 733.

FOURTHLY, "Such as exercise any witchcraft, enchantment, charm, or sorcery, whereby any person shall be killed, destroyed, consumed, or lamed in his or her body, or any part thereof." But none were within this branch who did not actually effect such mischief.

SECT. 5. Those in the second degree were, for the first offence, to suffer a year's imprisonment, and the pillory; and for the second, as felons without clergy. And these, by the manifest purport of the words of the act, which is very obscurely penned, seem to be divided into the two following species:

12. Mod. 556. FIRST, "Such as take upon them by witchcraft, enchantment, charm, or sorcery, to tell where treasure is to be found, or where things lost or stolen may be found, (a) or (a) See "Theftbote" Post, "to do any thing to the intent to provoke any person to unlawful love, or to hurt or destroy any person in his or her body, though the same be not effected."

Sum. 8. 3. Inst. 46. SECONDLY, "Such as shall use any witchcraft, &c. whereby any cattle or goods of any person shall be destroyed, wasted or impaired:" but those who take upon them to do this, were not within the act unless they actually did it. (b) (b) At Hertford assizes on the 4 March 1712, one Jane Wenham received sentence of death under this statute, on a conviction for witchcraft, on the prosecution of the Rev. Mr. Brugge.

SECT. 6. But this statute of James is repealed by 9 Geo. 2. c. 5. which enacts, "That no proceeding shall be had against any person for witchcraft, sorcery, enchantment, or conjuration, or for charging another with such crimes; and that whoever shall pretend to exercise those arts, or shall undertake to tell fortunes, or pretend by crafty science to discover stolen goods, shall be imprisoned for one year, stand four times in the pillory, and find sureties as the court shall think fit."

See Index, title "Vagrants."

SECT. 7. By 17. Geo. 2. c. 5. "All jugglers, fortune-tellers, gypsies pretending physiognomy, palmistry, or the like crafty science, shall be deemed rogues and vagabonds, and suffer as the act directs."

CHAPTER THE FOURTH,

OF SODOMY,

ALL unnatural carnal copulations, whether with man or beast, seem to come under the notion of sodomy, which was felony by the antient common law, and punished, according to some authors, with burning; according to others, with burning alive. 12. Co. 36, 37.
3. Inst. 58.
Puff. ch. 3.
4. Bac. Ab.
569.

According to BRITTON, b. 6. c. 9. these unnatural offenders were, on conviction, committed to the flames. FLETA, b. 6. c. 35. buries them alive within the earth. And the MIRROR, c. 1. f. 14. consigns them, with just indignation, to shameful and eternal oblivion.

Sect. 1. But at this day, by force of 25. Hen. 8. c. 6. and 5. Eliz. c. 17, this offence is punished in the same manner as other felonies which are excluded from clergy.

Sir MATTHEW HALE, 1. H. P. C. 670, says, those that are present aiding and abetting are all principals; the statute making it felony generally: that there are or may be accessaries *before* and *after*, as in the case of RAPE: but although none of the principals are admitted to their clergy, yet accessaries *before* and *after* are not excluded from clergy.

Sect. 2. In every indictment for this offence, there must be the words *rem habuit venerem, et carnaliter cognovit*; and consequently some kind of penetration, and also of emission, must be proved; but any the least degree is sufficient, and emission is *primâ facie* an evidence of penetration. 12. Co. 36, 37.
3. Inst. 58.
Qu. 1. Hale
528. 670.
Sed vide 1.
St. Tr. 388.
Duffey's case,

1721. Hollis's case, at Lincoln, 1781. Prentice's case, Admiralty Sess. 1786, Crown Circuit Assistant, 17, 18. and the case of Rex v. Wiseman, Fortescue's Rep. 91 to 98.

Sect. 3. † By the 22. Geo. 2. c. 33. f. 19. "If any person in his Majesty's fleet commits this crime, they, their aiders or abettors, shall be punished with death by the sentence of a court martial."

CHAPTER THE FIFTH.

OFFENCES AGAINST GOD.

3. Bac. Ab. 38. **O**FFENCES more immediately against God not capital are by the common law,

- 1. Vent. 293.
- 3. Keb. 607.
- 2. Str. 834.
- 4. Comm. 59.
- 1. Black. 395.

Secd. 1. **FIRST**, All blasphemies against God; as denying his being or providence, and all contumelious reproaches of Jesus Christ.

- 11. Mod. 142.
- Str. 416. 788.
- 834.
- 1. Burn 225.
- 4. Comm. 41.

Secd. 2. **SECONDLY**, All profane scoffing at the holy scripture, or exposing any part thereof to contempt or ridicule,

3. Burn E. L. 201. Fitzg. 65.

- 1. St. Tr. 802.

Secd. 3. **THIRDLY**, Impostors in religion; as falsely pretending to extraordinary commissions from God, and terrifying or abusing the people with false denunciations of judgments, &c.

- 1. Keb. 620.
- Dalt. 124.
- 1. Sid. 168.
- See the case of
- R. v. Read.
- Fort. 98.

Secd. 4. **FOURTHLY**, All open lewdness grossly scandalous; such as was that of those persons who exposed themselves naked to the people in a balcony in *Covent-garden* with most abominable circumstances.

- 2. R. Abr. 184.
- C. Jac. 44.
- 421.

Secd. 5. **FIFTHLY**, Seditious words in derogation of the established religion are indictable, as tending to a breach of the peace; as these, "Your religion is a new religion;" and, "Preaching is but prattling, and prayer once a-day is more edifying."

- 1. Ven. 293.
- 3. Keb. 621.
- Pop. 208.
- Scobell 121.
- 4. Comm. 64.
- Str. 776. 788.
- Ld. Ray. 451.

Secd. 6. **SIXTHLY**, Offences of this nature, because they tend to subvert all religion or morality, which are the foundation of government, are punishable by the temporal judges with fine and imprisonment, and also such corporal infamous punishment as to the court in discretion shall seem meet, according to the heinousness of the crime.

CHAPTER THE SIXTH.

OFFENCES AGAINST RELIGION.

OFFENCES, by statute, not capital, more immediately against GOD, are either such as are against RELIGION IN GENERAL, or such as are against THE ESTABLISHED CHURCH.

OFFENCES against RELIGION *in general* are of several kinds.

I. PROFANATION OF THE LORD'S DAY.

Stat. 1. By 27. Hen. 6. c. 5. it is ordained, "that all manner of fairs and markets held upon the high and principal feasts, as in the feast of the *Ascension* of Our Lord; in the day of *Corpus Christi*; in the day of *Whitsunday*; in *Trinity Sunday*, with other *Sundays*; and also in the high feast of the *Assumption* of our blessed Lady; the day of *All Saints*; and on *Good Friday*; shall clearly cease from all shewing of any goods or merchandizes (necessary victual only except), upon pain of forfeiture of all the goods aforesaid so shewed to the lord of the franchise or liberty where such goods, contrary to this ordinance, be or shall be shewed (the *four Sundays* in harvest except)."

FAIRS shall not be held on a *Sunday* or other holiday, except in harvest time.

Stat. 2. By 1. Jac. 1. c. 22. f. 28. "No person or persons who shall occupy the mystery or occupation of a cordwainer or shoemaker shall shew, to the intent to put to sale, any shoes, boots, buskins, startops, slippers or pantouffles, upon the *Sunday*, upon pain of forfeiture for every pair made, sold, shewed, or put to sale, three shillings and four-pence, and the just and full value of the same."

SHOEMAKERS shall not expose their goods to sell on a *Sunday*.

Stat. 3. By 3. Car. 1. c. 1. "There shall be no meetings, assemblies, or concourse of people out of their own parishes on the *Lord's day*, within the realm of *England*, or any the dominions thereof, for any sports and pastimes whatsoever: nor any bear-baiting, bull-baiting, interludes, common plays, or other unlawful exercises and pastimes, used by any person or persons within their own parishes: and every person or persons offending in any these premises, shall forfeit for every offence three shillings and four-pence, the same to be employed and converted to the use of the poor of the parish where such offence shall be committed;

PASTIMES, sports, or games shall not be practised on *Sunday*.

“ committed; and any one justice of the peace of the coun-
 “ ty, or the chief officer or officers of any city, borough, or
 “ town corporate, where such offence shall be committed,
 “ upon his or their view, or confession of the party, or
 “ proof of any one or more witnesses, by oath, shall find any
 “ person offending in the premises, the said justice or chief
 “ officer or officers shall give warrant under his or their
 “ hand and seal to the constables and churchwardens of
 “ the parish or parishes where such offence shall be com-
 “ mitted, to levy the said penalty so to be assessed, by way
 “ of distress and sale of the goods of every such offender,
 “ and in default of such distress the party offending shall be
 “ fet publicly in the stocks by the space of three hours.

4. Comm. 63. † *Sec. 4.* It is said, that this statute does not prohibit, but rather impliedly allows, any innocent recreation or amusement to persons within their respective parishes, even on the *Lord's day*, after divine service is over.

BUTCHERS *Sec. 5.* By 3. Car. 1. c. 2. s. 2. “ If any butcher, by
 shall not sell “ himself, or any other for him, by his privity or consent,
 meat on *Sun- “ shall kill or sell any victual upon the Lord's day, every*
 days. “ such butcher shall forfeit and lose for every such offence
 “ the sum of six shillings and eight-pence.”

- † *Sec. 6.* The selling meat on a Sunday was no offence at
 1. Stra. 702. common law, and therefore an indictment for this offence
 must conclude *contra formam statuti*. But if the offender
 Cro. C. C. keep open shop, the usual method is to indict at the sessions
 372. for the *nusance*.

No worldly la- *Sec. 7.* By 29. Car. 2. c. 7. it is enacted, “ That no
 bour business “ tradesman, artificer, workman, labourer, or other person
 or calling shall “ whatsoever, shall do or exercise any worldly labour, busi-
 be exercised “ ness, or work at their ordinary callings upon the *Lord's*
 on *Sunday*, ex- “ day, or any part thereof (works of necessity and charity
 cept it be of “ only excepted); and that every person, being of the age of
 necessity or for “ fourteen years or upwards, offending in the premises,
 ebarity. “ shall, for every such offence, forfeit the sum of five shil-
 2. Burn 787. lings: and that no person or persons whatsoever shall
 “ publicly cry, shew forth, or expose to sale any wares,
 “ merchandize, fruit, herbs, goods or chattels whatsoever,
 “ upon the *Lord's day*, or any part thereof, upon pain that
 “ every person so offending shall forfeit the same goods so
 “ cried or shewed forth, or exposed to sale.—And on con-
 “ viction before one justice upon view, confession, or the
 “ oath of one witness, the justice may issue his warrant to
 “ the constables or churchwardens to seize the said goods,
 “ and to sell the same, and to levy the said other forfeitures or
 “ penalties by way of distress and sale; or, in case of insuf-
 “ ficiency

“ ficiency to pay the said forfeitures or penalties, the party
 “ offending may be set publickly in the stocks by the space
 “ of two hours—the forfeitures and penalties to the use of
 “ the poor; saving that it shall be lawful for the justice out
 “ of such penalties and forfeitures to reward the informer,
 “ so as the reward exceed not a third part of the forfeitures
 “ and penalties.—BUT IT IS PROVIDED, that nothing in
 “ this act shall extend to the prohibiting of *dressings of meat*
 “ in families, or dressing or selling of meat in inns, cooks
 “ shops, or victualling-houses, for such as otherwise can-
 “ not be provided; nor to the *crying of milk* before nine
 “ of the clock in the morning, or after four of the clock
 “ in the afternoon.—And no person shall be prosecuted
 “ under this act, unless within ten days after the offence
 “ committed.”

† *Sec. 8.* It is said to have been agreed by the court, that an indictment will lie on this statute against a baker for baking loaves of bread or rolls on the *Lord's day* in the usual way of his trade, because that is not a work of necessity; but that it will not lie for baking puddings, pies, or meat for dinners; for the sabbath is more likely to be generally observed by a baker staying at home to bake the dinners of a number of families, than by his going to church and those families or their servants staying at home to dress dinners for themselves; and this sort of exercise of a trade not only falls within the EXCEPTION of “works of necessity and cha-
 “ rity,” but is also within the PROVISIO, as being for this purpose a cook's shop; it being as reasonable that a baker should bake for the poor, as that a cook should roast or boil for them. 11. Mod. 114.
Cowp. 640.

† *Sec. 9.* It has also been determined, that a person cannot be convicted of committing more than one offence on the same day under this statute; and therefore if a justice proceed to convict an offender in more than one penalty for the same day, it is an excess of judicature, for which an action will lie before the convictions are quashed. 2. Burr, 788.
Crepps v.
Durden,
Cowp. 640.
Comy. Rep.
274.
10. Mod. 26.
Boscawen on
Conv. 116.

† *Sec. 10.* But perhaps this must be understood only where the baking consists of one intire and continued act; for it has been determined on the statute 12. Geo. 2. c. 36. which inflicts a penalty on any person who shall sell English books piratically printed abroad, that two penalties may be incurred on the same day, if the acts of sale be distinct. Brook v.
Miliken.
3. Term Rep.
509.

Sec. 11. By 10. and 11. Will. 3. c. 24. s. 14. for regulating the sale of fish at *Billingsgate market*, “the act shall not be construed to prohibit the selling of *Mackarel* before or after divine service on *Sundays*.” MACKAREL
may be sold on
Sunday.

Sec. 7.

Public debating societies to which persons are admitted for money shall not be held on Sunday.

(a) See Post. ch. 74.

The person who shall manage any publick debating society to which persons shall be admitted on Sunday for money shall be considered as the master thereof.

† *Seet.* 12. By 21. Geo. 3. c. 49. “ Any house, room, or other place which shall be opened or used for publick entertainment or amusement, or for publicly debating on any subject whatsoever, upon any part of the *Lord’s day* called *Sunday*, and to which persons shall be admitted by the payment of money, or by tickets sold for money, shall be deemed a disorderly house or place; and the keeper of such house, room, or place, shall forfeit the sum of two hundred pounds for every day that such house, room, or place, shall be opened or used as aforesaid on the *Lord’s day*, to such person as will sue for the same, and be otherwise punishable as the law directs in cases of *disorderly houses (a)*; and the person managing or conducting such entertainment or amusement on the *Lord’s day*, or acting as master of the ceremonies there, or as moderator, president, or chairman, of any such meeting for publick debate on the *Lord’s day*, shall likewise, for every such offence, forfeit the sum of one hundred pounds to such person as will sue for the same; and every doorkeeper, servant, or other person, who shall collect or receive money or tickets from persons assembling at such house, room, or place, on the *Lord’s day*, or who shall deliver out tickets for admitting persons to such house, room, or place on the *Lord’s day*, shall also forfeit the sum of fifty pounds to such person as will sue for the same.

† *Seet.* 13. By 21. Geo. 3. c. 49. s. 2. “ Any person who shall at any time hereafter appear, act, or behave him or herself as master or mistress, or as the person having the care, government, or management of any such house, room, or place as aforesaid, shall be deemed and taken to be the keeper thereof, and shall be liable to be sued or prosecuted, and punished as such, notwithstanding he or she be not in fact the real owner or keeper thereof: And wherever any such house, room, or place, shall belong to or be kept by divers persons in partnership, as joint-owners or joint keepers thereof, each and every such joint-owner or joint-keeper of such house, room, or place, shall be deemed the keeper thereof, and shall be liable to be sued or prosecuted, and punished as such: And any house, room, or place, at which persons shall be supplied with tea, coffee, or any other refreshments of eating or drinking on the *Lord’s day*, at any greater prices than the common and usual prices at which the like refreshments are commonly sold upon other days at such house, room, or place, or at coffee-houses, or other houses where the same are usually sold, shall be deemed a house, room, or place, to which persons are admitted by the payment of money, although money be not there taken in the name of or for admittance, or at the time

“ when

“ when persons enter into or depart from such house, room, or place ; and any house, room, or place, which shall be opened or used for any public entertainment or amusement, or for public debate, on the *Lord's day*, at the expense of any number of subscribers or contributors to the carrying on any such entertainment or amusement, or debate, on the *Lord's day*, and to which persons shall be admitted by tickets, to which the subscribers or contributors shall be intitled, shall be deemed a house, room, or place, to which persons are admitted by the payment of money, within the meaning of this act.”

† *Secl.* 14. And by 21. Geo. 3. c. 49. s. 3. “ Any person advertising, or causing to be advertised, any public entertainment or amusement, or any public meeting for debating on any subject whatsoever, on the *Lord's day*, to which persons are to be admitted by the payment of money, or by tickets sold for money, and any person printing or publishing any such advertisement, shall respectively forfeit the sum of FIFTY POUNDS for every such offence, to any person who will sue for the same.”—But the action must be brought within six calendar months after the offence committed.

Persons advertising or publishing any public meeting on the *Lord's day* to which persons are admitted for money shall forfeit 50*l*.

† *Secl.* 15. By 3. Car. 1. c. 2. it is enacted, “ That no carrier with any horse or horses, nor waggonmen with any waggon or waggons, nor carman with any cart or carts, nor wainman with any wain or wains, nor drover with any cattle, shall, by themselves, or any other, travel upon the *Lord's day*, upon pain that every person and persons so offending, shall lose and forfeit twenty shillings for every such offence.”

No CARRIER, driver, or drover, shall travel on *Sunday*.

† *Secl.* 16. By 29. Car. 2. c. 7. s. 5. “ If any person or persons whatsoever who shall travel upon the *Lord's day* shall be then robbed, no hundred nor the inhabitants thereof shall be charged with or answerable for any robbery so committed, but the person or persons so robbed shall be barred from bringing any action for the said robbery.”—But this shall not remove from the inhabitants of the counties and hundreds, the obligation of making HUE AND CRY.

Persons travelling on *Sunday* shall not, if robbed, charge the hundred.

Secl. 17. By 11. & 12. Will. 3. c. 21. s. 13. “ The Rulers of the Waterman's Company, for the time being, or the major part of them, on their respective court-days, may appoint any number of watermen not exceeding forty, to ply and work on any *Lord's day* between *Vauxhall* and *Limehouse*, at such common stairs or places of

The Waterman's Company may appoint ferry boats to work on *Sunday*.

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“plying as to the rulers shall seem most convenient for the
 “carrying and recarrying of passengers cross the said river
 “between the limits aforesaid, at one penny each person so
 “to be carried. The amount to be paid to the Rulers of
 “the Waterman’s Company every *Monday* morning; on
 “pain of forty shillings.”

**HACKNEY
 COACHES** and
 chairs may
 ply on *Sunday*.

Sett. 18. By 9. Anne, c. 23. s. 20. “It shall be lawful to
 “and for any licensed hackney coachman or his driver, or
 “any chairman, to ply and stand with their coaches and
 “chairs, and to drive and carry the same respectively on the
 “*Lord’s day*, within the limits of the weekly bills of mor-
 “tality.”

**FISH CARRI-
 AGES** may pass
 and repass on
Sunday.

† *Sett.* 19. By 2. Geo. 3. c. 15. “Fish carriages, such as
 “are described in the act, shall be allowed to travel, pass,
 “and be drawn on *Sundays* and holydays on any road,
 “whether laden or returning empty; and the horse or
 “horses which shall return from drawing any such fish
 “carriage, although rode on by any driver of any such fish
 “carriage, or drawing back any empty fish carriage, shall
 “also be allowed to pass on *Sundays* and holydays on any
 “road, without any driver of any such fish carriage, or
 “the rider on any such horse as aforesaid, incurring any
 “penalty for so travelling therewith.”

GAME shall
 not be killed
 by any person
 either on a
Sunday or
Christmas-day.

† *Sett.* 20. By 13. Geo. 3. c. 80. “If any person or per-
 “sons shall upon a *Sunday*, or on *Christmas-day*, in the day-
 “time, knowingly and wilfully take, kill, or destroy any
 “hare, pheasant, partridge, heath game, or moor game;
 “or shall upon a *Sunday*, or on *Christmas-day*, use any gun,
 “dog, net, or engine for taking, killing, or destroying any
 “hare, pheasant, partridge, moor game, or heath game;
 “every such person shall forfeit, for the first offence, any
 “sum not exceeding twenty pounds, nor less than ten
 “pounds; and for the second offence, any sum not exceed-
 “ing thirty pounds, nor less than twenty pounds; on con-
 “viction before one justice on the oath of one witness:
 “But if information shall be made on oath by one witness,
 “before one justice, against any person offending, and it
 “shall appear that he hath already been convicted of a first
 “and second offence, such justice may commit him to the
 “common gaol or house of correction till the next general
 “quarter sessions, unless he enter into a recognizance with
 “two sureties to appear at such sessions to be heard by in-
 “dictment for such third offence; and on conviction shall
 “forfeit and pay fifty pounds, or on neglect or refusal be
 “committed to the common gaol, or house of correction,
 “for not less than six nor more than twelve months.”

Sett.

Sett. 21. By 29. Car. 2. c. 7. f. 6. "No person or persons upon the *Lord's day* shall serve or execute, or cause to be served, or executed, any writ, process, warrant, order, judgment, or decree (except in cases of treason, felony, or breach of the peace), but that the service of every such writ, process, warrant, order, judgment, or decree, shall be void to all intents and purposes whatsoever; and the person or persons so serving or executing the same, shall be as liable to the suit of the party grieved, and to answer damages to him for doing thereof, as if he or they had done the same without any writ, process, warrant, order, judgment, or decree at all."

CIVIL PROCESS shall not be served or executed on *Sunday*.

† *Sett.* 22. Before the passing of this statute all *ministerial acts* done on a *Sunday* were lawful (a); and now a warrant of justices of the peace for good behaviour (b); an escape warrant (c); the lord chancellor's warrant; or an order of commitment for a contempt (d); process on an indictment; or citation of the spiritual court (e); may be executed on a *Sunday*, for they are within the exception of the statute. But persons who are bail to the sheriff cannot take the principal on a *Sunday* to surrender him (f); nor can a man, as has been before held (g) be taken on a *Sunday* on an attachment for non-performance of an award (h).

(a) 9. Co. 66.
Cro. Jac. 280.
(b) Ray. 250.
Cro. Car. 602.
(c) 6. Mod. 231.
5. Mod. 95.
(d) Carth. 504.
(e) 1. Atk. 55.
Sed. Qu.
(f) 2. Bl. Rep. 1273.

(g) 1. Atk. 55. (h) 1. Term Rep. 266.

II. PROFANE CURSING AND SWEARING.

Sett. 23. By 19. Geo. 2. c. 21. "If any person or persons shall profanely curse or swear, and be thereof convicted on the oath of any one or more witness or witnesses, before any one justice of the peace for any county, city, riding, division, or liberty, or before the mayor, justice, bailiff, or other chief magistrate of any city or town corporate, or by the confession of the party offending, every person or persons so offending shall forfeit and lose the respective sums hereinafter mentioned, that is to say—every day labourer, common soldier, common sailor, and common seaman, *one shilling*—and every other person under the degree of a gentleman, *two shillings*—and every person of or above the degree of a gentleman, *five shillings*;—and in case any such person or persons shall, after conviction, offend a second time, every such person shall forfeit and lose *double*; and for every other offence after a second conviction *treble* the sum first forfeited by any offender, for profane cursing and swearing as aforesaid."

The penalties on profane cursing and swearing; and the mode of punishment.
8. Mod. 59.
9. Mod. 366.
Sayer, 304.
Stra. 497. 686.
608.
2. Ld. Ray. 1360.

Sett. 24. By 19. Geo. 2. c. 21. f. 2. "In case any person or persons shall profanely swear, or curse, in the presence and hearing of any justice of the peace, &c. he may convict every such offender as aforesaid, without any other proof."

Justice may convict on his own hearing, &c.

The constable shall immediately apprehend persons who *curse* and *swear* in his presence, &c.

† *Sec.* 25. By 19. Geo. 2. c. 21. s. 3. "In case any person shall profanely swear or curse in the presence and hearing of any constable, petty constable, tythingman or other peace officer, they and each of them *shall*, if the offender be *unknown* to them, seize, secure, and detain such offender, and forthwith carry him before the next justice, &c.; and if any person so profanely swearing and cursing in the presence or hearing of any such constable, &c. shall be *known* to him or them, he or they shall speedily make information before some justice, &c."

Justices shall immediately convict offenders, and on non-payment of penalty send them to the house of correction.

† *Sec.* 26. By 19. Geo. 2. c. 21. s. 4. "And every such justice, &c. shall immediately upon information given upon oath of any such constable, &c. or of any other person whatsoever, cause the offender to appear before him, and, upon such information being proved as aforesaid, convict such offender; and, if such offender do not immediately pay down the respective sum so forfeited, or give security to the satisfaction of the justice, &c. before whom the conviction is made, he shall be committed to the house of correction, to be kept to hard labour, for ten days."

But if they are *soldiers* or *sailors*, they shall, on non-payment, be set in the stocks,

† *Sec.* 27. But by 19. Geo. 2. c. 21. s. 5. "In case any common soldier belonging to any regiment in his majesty's service, or any common sailor or common seaman belonging to any ship or vessel, shall be convicted of profane cursing or swearing as aforesaid, and shall not immediately pay down the penalty, or give security as aforesaid, and also *the costs*; he shall, instead of being committed to the house of correction, be ordered to be publicly set in the stocks for the space of one hour for every single offence, and for any number of offences, whereof he shall be convicted at one and the same time, two hours."

Conviction by the justice shall be final,

† *Sec.* 28. By 19. Geo. 2. c. 21. s. 8. "Every justice shall cause the conviction to be drawn up in the form as described in the act; which said form and conviction shall not be liable to be removed by *certiorari* into his majesty's court of king's bench, but shall be deemed and taken to be final to all intents and purposes whatsoever."

Sec. 29. By 22. Geo. 2. c. 33. "Persons belonging to his majesty's ships of war guilty of profane oaths or curses, shall incur such punishment as a COURT MAR-TIAL shall impose.

III. DRUNKEN-

IN. DRUNKENNESS.

Stat. 30. By 4. Jac. 1. c. 5. "All and every person and persons convicted of
 "persons who shall be drunk, and of the same offence of *drunkenness*
 "*drunkenness* shall be lawfully convicted, shall, for every shall forfeit
 "such offence, forfeit and lose *five shillings*, to be paid *five shillings*.
 "within one week after conviction, to the churchwardens of 1. Jac. 1. c. 9.
 "the parish where the offence shall be committed, for the 4. Jac. 1. c. 3.
 "use of the poor; and on refusal or neglect to pay the 7. Jac. 1. c. 10.
 "same, it may be levied by warrant, or precept, from the 21. Jac. 1. c. 7.
 "convicting magistrate; or, if the offender shall be unable 1. Car. 1. c. 4.
 "to pay the same, he shall be committed to THE STOCKS 1. Burn 40.
 "by the space of *six hours* for every offence."

IV. REVILING THE SACRAMENT.

Stat. 31. By the statute 1. Edw. 6. c. 1. repealed by Persons reviling
 1. Mary, c. 2. and revived by 1. Eliz. c. 1. it is enacted, *the sacrament*
 "that whoever shall deprave, despise, or contemn the blef- of the
 "fed sacrament of the Lord's Supper, in contempt thereof, Lord's Supper
 "by contemptuous words, or by any words of depraving, shall suffer
 "despising, or reviling; or shall advisedly in any other wise imprisonment.
 "contemn, despise, or revile the said most blessed sacra-
 "ment, shall suffer imprisonment, and make fine and ran-
 "som at the king's will and pleasure."

Stat. 32. By 3. Jac. 1. c. 21. "Whoever shall use the To ridicule
 "name of the Holy Trinity profanely or jestingly, in any the *Holy Tri-*
 "stage play, interlude, or show, shall be liable to a *qui tam* nity incurs a
 "penalty of ten pounds." penalty of 10l.

Stat. 33. By 1. Will. 3. c. 18. s. 17. "Whoever shall Penalty on de-
 "deny in his preaching or writing the doctrine of the nying the Tri-
 "blessed Trinity shall lose all benefit of the act for grant- nity.
 "ing toleration, &c."

Stat. 34. I shall not mention the offences against 2. & 3. Feasts and
 Edw. 6. c. 19. & 5. Eliz. c. 5, relating to *fasts* and *fish-* fasts.
 "days, because it is expressly declared, that those statutes are 2. Burn. 185,
 enacted merely on a political account; and it is made penal 186.
 to affirm that any eating of fish, or forbearing of flesh men-
 tioned therein, is necessary to salvation, or that it is the
 service of God.

CHAPTER THE SEVENTH.

OF OFFENCES AGAINST THE COMMON PRAYER.

OFFENCES against THE ESTABLISHED CHURCH are, such as concern all persons in general; such as more immediately relate to those of the Popish religion; and such as more immediately regard Protestant dissenters.

Those which concern all persons in general are, **FIRST**, Against the Common Prayer. **SECONDLY**, Nonconformity. **THIRDLY**, In teaching school without conforming to the church. **FOURTHLY**, In not coming to church.

I. OFFENCES AGAINST THE COMMON PRAYER.

4. Comm. 50. *Sec. 1.* As to which it is to be observed, That by 2. 1. Lev. 295. & 3. Edw. 6. c. 1. & 6. Edw. 6. c. 1. which were repealed by 1. Mary 2. c. 2. and revived by 1. Eliz. c. 2. **THE COMMON PRAYER BOOK** was first established under severe penalties; but the same penalties being repeated and enlarged by 1. Eliz. c. 2. and 13. & 14. Car. 2. c. 4, which enacts the use of the same Common Prayer with some alterations, those statutes of Edward the sixth seem, at this day, to be of little use.

Form of the indictment,
3. Mod. 78.

Sec. 2. By 1. Eliz. c. 2. s. 4, 5, 6. "If any parson, vicar, or other whatsoever minister, that ought to say the said Common Prayer, &c. shall refuse to use it in such church, &c. or other place where he should use to minister the same, or wilfully or obstinately standing in the same, use any other form, or speak any thing in derogation of the said book, or any thing therein contained, he forfeits for the first offence one year's profit of all his spiritual promotions, and shall suffer six months imprisonment; and for the second offence shall be deprived, &c."

In the construction of this act it has been resolved,

Dyer 203.
1. Leo. 295.

Sec. 3. **FIRST**, that under the words "parson, vicar, or other whatsoever minister, that ought or should say the said Common Prayer, &c." those clergymen who have no cure are included, as much as those who have one, and that they are punishable for using any other form, &c. inasmuch as by their ordination they are obliged to officiate in the offices of the church, &c. and it is said that they are sufficiently shewn to be in holy orders by the word *clericus* in an indictment.

Sec.

Sect. 4. The indictment also must alledge that the party not only used another Form of Prayer, but that he used it instead of that prescribed by the book of Common Prayer, for otherwise every parson might be indicted that used prayers before his sermon other than such as are required by the book of Common Prayer; and therefore where a parson was indicted for using *alias preces* in the church *et alio modo* than mentioned in the said book, and concluded *contra formam statuti*, the Court quashed the indictment.

Rex v. Sparks.
3. Mod. 78.
See the indictment at large
2. Show. 447.

Sect. 5. SECONDLY, that this statute being not only in the affirmative, but also expressly saving the jurisdiction of ecclesiastical courts, does not restrain them from proceeding against these offenders in their own methods, as disturbers of the unity and peace of the church; and consequently that such persons may be deprived by the said court, according to the course of the spiritual law, for the first offence.

Gib. 268.
5. Co. Cawdry's Case, 5.6.
Poph. 59.
2. R. Abr. 222.

Sect. 6. Also it is further enacted, by 1. Eliz. c. 2. s. 9. "That if any person shall in plays, songs, or other open words, speak any thing in derogation, depraving or despising of the said book, &c. or by open fact compel, or otherwise procure or maintain any minister to say any Common Prayer openly, &c. in other form; or shall by any of the said means let any minister to say the said Common Prayer, &c. he shall forfeit one hundred marks for the first offence, and four hundred for the second, &c. (which if he pay not within six weeks after conviction, he shall suffer six months imprisonment for the first offence, and twelve for the second) and for the third offence shall forfeit all his goods and chattels, and shall suffer imprisonment for life."

Vide 7 & 8 sections of this act; the 13. & 14. Car. 2. c. 4. enforced by 5. Ann. c. 5; and 22. Geo. 2. ch. 33.—
2. Shower 53.

Sect. 7. It has been made a question in the construction of this clause, whether if the party die within six weeks, the said forfeiture be not discharged, since by the act of God the election of paying it, or suffering imprisonment in lieu of it, is taken away.

Dyer 203. 231.

† *Sect. 8.* But by 31. Geo. 3. c. 32. s. 3. "No person professing the *Roman Catholic* religion, who shall take and subscribe the oath therein mentioned, shall be convicted or prosecuted upon this act."

See the act more at large post.

CHAPTER THE EIGHTH.

OF NONCONFORMITY IN OFFICE.

OFFENCES in accepting or holding an office without due conformity to the church consist—**FIRST**, In not receiving the sacrament both before and after the acceptance of an office.—**SECONDLY**, In going to any other place for religious worship than **CHURCH**, during the continuance in an office.

1. As to THE FIRST of these offences,

Every member of a Corporation shall take the SACRAMENT.

Sccl. 1. It is enacted by THE CORPORATION ACT, 13. Car. 2. ft. 2. c. 1. f. 12. “ That no person or persons shall be placed, elected, or chosen in or to any office of mayor, alderman, recorder, bailiff, town clerk, common councilman, or other office of magistracy, or place, or trust, or other employment relating to or concerning the government of any city, corporation, borough, cinque port, or other port town, that shall not have, within one year next before such election or choice, taken *the Sacrament* of the Lord’s Supper according to the Rites of the Church of England, and in default hereof every such placing, election, and choice shall be void.”

But corporators who have neglected to take the Sacrament shall be established in their offices unless removed or prosecuted for such omission within six months.

† *Sccl.* 2. But by 5. Geo. 1. c. 6. f. 3. “ All and every person and persons in actual possession of any office that are required by the above act to take the sacrament of the Lord’s Supper, within one year next before his election or choice into such office, shall be confirmed in their several and respective offices and places, notwithstanding their omission to take the sacrament as aforesaid, and shall be indemnified, freed, and discharged of and from all incapacities, disabilities, forfeitures, and penalties arising from such omission; and none of their acts, nor the acts not yet avoided of any who have been members of any corporation, or in actual possession of such offices, shall be questioned or avoided for or by reason of such omission; but all such acts shall be and are hereby declared to be as good and effectual as if all and every such person and persons had taken the sacrament of the Lord’s Supper in manner aforesaid; nor shall any person or persons who shall be hereafter placed, elected, or chosen in or to any the offices aforesaid, be removed by the corporation or otherwise prosecuted for or by reason of such omission; nor shall any incapacity, disability, forfeiture or penalty be incurred by reason of the same, unless such person be

“ so

removed, or such prosecution be commenced within ~~fix~~ ^{six} months after such person be placed or elected into his respective office as aforesaid; and, in case of a prosecution, the same shall be carried on without wilful delay."

† *Secl.* 3. It has been held that persons chosen in bare freedom of a corporation, if they have no share in the magistracy or government thereof, need not take the sacrament. *Fitzg.* 47.

† *Secl.* 4. If a person be duly chosen alderman of a borough, and obtain a *mandamus* to the mayor to swear him in, and the mayor return that he was not elected alderman as by the writ is supposed, the plaintiff, on the trial of an issue on this return, must prove that he had received the sacrament within one year before his election, according to the statute 13. Car. 2. st. 2; for never having been admitted into the office, he is not within the 5. Geo. 1. c. 6. although six months had expired from the time of his election; for it is the *possession* only that is protected by that act. *Tufton v. Nevinston, 2. Ld. Ray, 1354. Stra.* 585.

† *Secl.* 5. But if a person be elected town clerk, and obtain a *mandamus* for the delivery of the common seal, books, papers, and records of the corporation, and afterwards bring an action for falsely returning that he was not duly elected town clerk, the plaintiff need not prove that he had received the sacrament pursuant to the 13. Car. 2. st. 2. although the return to the *mandamus* were made within six months after his election; for, since the statute 5. Geo. 1. c. 6. s. 3. the election of a person who had not taken the sacrament within a year next preceding it is not *void*, but only *voidable* by a removal or prosecution within six months, and therefore after an undisturbed possession for that time the election is confirmed and become absolute. *Crawford v. Powell, 2. Burr. 1013. 1. Bl. Rep.* 229.

† *Secl.* 6. So if a mayor is to be chosen from among the jurats of a corporation, and a person be chosen a jurat without having received the sacrament within one year previous to his election, and after the expiration of six months without removal, or prosecution, he is chosen mayor, the statute of 5. Geo. 1. c. 6. will operate so as to give him the benefit of non-prosecution, and remove his incapacity and disability arising from having neglected to receive the sacrament within the year before he was chosen jurat. *Marten v. Jenkins, 2. Stra.* 1145.

† *Secl.* 7. But although the statute 5. Geo. 1. c. 6. after the expiration of six months, operates as a protection to the *possession*, yet if the objection to the not having received the sacrament within a year previous to the election be *recently* made before any possession, it will not bar the remedy; as if the person elected, upon being refused to be sworn in, applies *Rex v. Monday, Cowp.* 529.

plies for a *mandamus*, the fact of his not having received sacrament would be a sufficient ground of refusal.

Harrison v.
Evans,
Cowp. 393.
535.
2. Burn E. L.
168.
Espinaffe Dig.
659.

† *Señ. 8.* The statute 13. Car. 2. st. 2. not only creates a disability in the person elected to hold the office, but operates as a prohibition to the electors, for it was made to exclude *dissenters* from office, and to disable them from serving; and therefore if a *Protestant dissenter* be elected to the office of sheriff, and sued, upon a *bye law* of the corporation, for a fine for not taking upon him the office, he may plead the CORPORATION ACT, and the TOLERATION ACT, 1. Will. & Mary, c. 18. in bar to such action.

Rex v. Read,
2. Mod. 299.
Comb. 315.
Ray. 43.

† *Señ. 9.* But although a person who has not received the sacrament within one year is not eligible to any office within the meaning of the 13. Car. 2. st. 2. yet it has been adjudged to be no excuse for a person bound to accept of a corporation office, that he is disabled to receive the sacrament by having been excommunicated; for it is incumbent on such person to remove the disability.

All persons holding any office civil or military, or having any place of trust under the crown, shall not only take the oaths of allegiance and supremacy and receive the sacrament, but shall also make and subscribe THE TEST.

Carth. 478.

(a) As recited
6. Geo. 3. c. 53.

Señ. 10. By the TEST ACT, 25. Car. 2. c. 2. it is enacted, " That all and every person or persons that shall be admitted, entered, placed, or taken into any office or offices, civil or military, or shall receive any pay, salary, fee, or wages by reason of any patent or grant of his majesty, or shall have command or place of trust from or under his majesty, his heirs or successors, or by his or their authority, or by authority derived from him or them, within *England, Wales, or Berwick upon Tweed*, or in his majesty's navy, or in the several islands of *Jersey* and *Guernsey*, or that shall be admitted into any service or employment in his majesty's household or family, shall take the several oaths of SUPREMACY and ALLEGIANCE(a), and at the same time shall make and subscribe THE TEST, and shall also receive THE SACRAMENT of the Lord's Supper according to the usage of the Church of *England*, in some public church upon some Lord's day, commonly called *Sunday*, immediately after divine service and sermon: And all and every person or persons aforesaid, that do or shall neglect or refuse to take the said oaths and sacrament shall be *ipso facto* adjudged incapable and disabled in law to all intents and purposes whatsoever to have, occupy, or enjoy the said office or offices, employment or employments, or any part of them, or any profit or advantage appertaining to them or any of them; and every such office and place, employment and employments, shall be void, and is hereby adjudged void; and, on conviction

" by

by information, presentment, or indictment, shall be disabled in law, &c. and shall forfeit five hundred pounds.—
 “ But this act shall not extend to married women; to persons under eighteen years of age; to persons beyond seas; or to persons *non compos mentis*; or to constables, churchwardens, overseers, surveyors of the highway, or any like inferior civil officer; or to any office of forester or keeper of any park, chase, warren, or game; or bailiff of any manor or lands, nor to any like private officers.”

It has been questioned whether this statute extends to the Censor of the

College of Physicians. Carth. 478. 5. Mod. 431. 3. Burn. 258.

† Sect. 11. By 1. Geo. 1. c. 13. s. 2. “ All and every person and persons, as above described, and all ecclesiastical persons, heads or governors of what denomination soever, and all other members of colleges and stalls in any university, that are or shall be of the foundation, or that do or shall enjoy any exhibition, being of or as soon as they shall attain the age of eighteen years, and all persons teaching or reading to pupils in any university or elsewhere, and all school-masters and ushers, and all preachers and teachers of separate congregations, high and chief constables, and every person who shall act as a serjeant at law, counsellor at law, barrister, advocate, attorney, solicitor, (a) proctor, clerk, or notary, by practising in any manner as such in any court or courts whatsoever in England, who shall be admitted into or enter upon any of the before-mentioned preferments, benefices, offices, or places, or shall come into any such capacity, &c. shall take the oaths of ALLEGIANCE and SUPREMACY, and subscribe THE DECLARATION. But this act shall not extend to avoid any office of inheritance, so as the person having such office substitute a deputy or deputies, and such deputy or deputies shall qualify him or themselves pursuant to the directions of 25. Car. 2. c. 2.”

All heads of colleges, school-masters, barristers, attornies, &c. shall take the oaths, &c. pursuant to THE TEST ACT.

5. Mod. 431. 3. Burn's J. 258.

† Sect. 12. By 9. Geo. 2. c. 26. s. 3. “ All and every the person and persons as above described, shall take and subscribe the oaths appointed by the 1. Geo. 1. c. 13. in such form as by that statute is directed, in the court of chancery, king's bench, common pleas, or exchequer, or at the general or quarter sessions of the county, city, or place where such

And the said oaths, &c. shall be taken in one of the superior courts, or at sessions within six months.

(a) By 7. & 8. Will. 3. c. 24. “ If any person shall act as a serjeant at law, counsellor at law, barrister, advocate, attorney, solicitor, proctor, clerk, or notary, without having taken the oaths of allegiance and supremacy, as required by the 1. Will. & Mary, c. 8. or made and subscribed the declaration as appointed by 25. Car. 2. c. 2. such person shall incur the penalties of a *præmunire*.” But by the 31. Geo. 3. c. 32. s. 22. these oaths and this declaration shall not be required to be taken by any person professing the *Roman Catholic* religion, as a qualification or requisite to enable him to act in the capacities aforesaid, but taking the oath of allegiance, abjuration, and declaration appointed by the act shall be sufficient.

“ person

“ person shall be or reside, at any time within *six calendar*
 “ *months* after he or they shall be admitted into or enter upon
 “ any such preferment, benefice, office or place, or come
 “ into such capacity, or take upon him or them such prac-
 “ tice, employment, or business as aforesaid; and all persons
 “ who by 25. Car. 2. c. 2. are required to make and subscribe
 “ THE DECLARATION against transubstantiation, shall make
 “ and subscribe the said declaration at the same places and
 “ at the same times as are by this act limited for taking and
 “ subscribing the oaths aforesaid: and all persons neglect-
 “ ing to take the oaths and subscribe the declaration within
 “ the times hereby limited, shall incur the disabilities and
 “ penalties inflicted by the said act, 25. Car. 2. c. 2.”

Corporators
 elected, &c.
 shall take the
 oaths on elec-
 tion.
 4 Burn 2130.
 Esp. Dig. 693.

† Sect. 13. By 11. Geo. 1. c. 4. f. 4. “ Mayors, bailiffs,
 “ or other chief officers, who shall be elected pursuant to
 “ the directions of this act, shall take the oath or oaths re-
 “ quired by law at the time of their admission into such office,
 “ before such officer as shall preside at such election.”

But no person
 shall be *sum-*
moned to take
 the oaths, &c.

† Sect. 14. But by 31. Geo. 3. c. 32. f. 18. “ No per-
 “ son shall be *summoned* to take the oath of supremacy, or
 “ the oath of allegiance, or to make the declaration against
 “ transubstantiation, or be prosecuted for not obeying such
 “ summons.”

Lutw. 910.
 2. Mod. 299.
 Gibf. 506.
 Comb. 315.
 Sav. 43.
 And. 200.

Sect. 15. But it hath been adjudged, that the persons
 disabled by not taking the oaths, &c. lose only their right
 to the profits of their offices from the time of such disability;
 but that they lose nothing vested in them before.

3. Keb. 606.
 665. 682. 721.
 2. Jon. 81. 137.
 1. Lev. 184.
 242.
 2. Mod. 193.
 3. Lev. 116.

Sect. 16. Notwithstanding the words of THE CORPO-
 RATION ACT are so very strong as to make such election,
 &c. void, and those of THE TEST ACT to make such per-
 sons “ disabled in law to all intents and purposes whatso-
 “ ever, to have, occupy, or enjoy the said offices;” yet it
 hath been strongly holden, that the acts of one under such
 a disability, being instated in such an office, and executing
 the same without any objection to his authority, may be
 valid as to strangers. For otherwise not only those who
 no way infringe this law, but even those whose benefit is
 intended to be advanced by it, might be sufferers for ano-
 ther's fault, to which they are no way privy; and one
 chasm in a corporation happening through the default of
 one head officer would perpetually vacate the acts of all
 others, whose authority, in respect of their admission into
 their offices, or otherwise, may depend on his.

II. As to the **SECOND OFFENCE** of this kind, *viz.* that of going to any other place for religious worship than the church, during the continuance of an office;

Stat. 17. It is enacted by 5. Geo. 1. c. 4. "That if
 " any mayor, bailiff, or other magistrate, in England,
 " Wales, Berwick upon Tweed, Jersey or Guernsey, shall
 " knowingly or wilfully resort to or be present at any
 " publick meeting for religious worship other than the
 " church of England, as by law established, in the gown
 " or other peculiar habit, or attended with the ensign or
 " the ensigns, of or belonging to such his office, that every
 " such mayor, bailiff, or other magistrate, being thereof
 " convicted by due course of law, shall be disabled to hold
 " such office or employments, and shall be adjudged inca-
 " pable to bear any public office or employment whatsoever
 " within England, Wales, Berwick upon Tweed, Jersey,
 " or Guernsey."

If a corporate magistrate attend any other place of worship than the church in his official habit, he shall be disabled.

4. Comm. 54

CHAPTER THE NINTH.

OF NONCONFORMITY IN SCHOOL-MASTERS.

AS to the offence of TEACHING SCHOOL without conforming to the church, so far as it concerns all persons in general;

School-masters not conforming to the liturgy forfeit sol. and are disabled to teach.

Stat. 1. By 23. Eliz. c. 1. f. 6, 7. "If any person or persons, body politick or corporate, shall keep or maintain any school-master, who shall not repair to church according to the form of the said statute, or be allowed by the bishop or ordinary of the diocese, (who shall not take any thing for the said allowance) they shall forfeit for every month ten pounds; and such school-master presuming to teach contrary to the said act, and being thereof convicted, shall be disabled to be a teacher of youth, and shall suffer imprisonment, without bail or mainprize, for one year."

No person shall keep a school, except a free grammar-school, or in the universities, unless allowed by the bishop.

Carth. 464, 465.

1. Vent. 41.
Vide 19. Geo.
3. c. 44. Post.
ch. 16.

Stat. 2. By 1 Jac. 1. c. 4. f. 9. "No person shall keep any school, or be a school-master, out of the universities or colleges of this realm, except it be in some publick or free grammar-school, or in some such noble man's or noble woman's, or gentleman's or gentlewoman's house, as are not recusants, or where the same school-master shall be specially licensed therunto by the archbishop, bishop, or guardian of the spiritualities of that diocese, upon pain, that as well the school-master as also the party that shall retain or maintain any such school-master, contrary to the meaning of the said statute, shall forfeit each of them, for every day so wittingly offending, forty shillings."

Or except dissenters qualified under the Toleration Act.

(See the 12.
Anne, st. 2. c. 7.
and 5. Geo. 1.
c. 4.)

1 Stra. 58.

† *Stat. 3.* But by 1. Will. & Mary, c. 18. commonly called the *Toleration Act*, "Neither the 23. Eliz. c. 1. nor any other law or statute of this realm, made against papists, or popish recusants, except 25. Car. 2. c. 2. and 30. Car. 2. st. 2. c. 1. shall be construed to extend to any person dissenting from the Church of England that shall take the oaths mentioned in the first of William and Mary, and subscribe the declaration mentioned in the 30. Car. 2. c. 1."

Or Roman Catholics qualified under the 31. Geo. 3. c. 32.

See post. c. 15.
f. 13.

† *Stat. 4.* And by 31. Geo. 3. c. 31. f. 13. "No ecclesiastick or other person professing the *Roman Catholic religion*, who shall take and subscribe the oath of *allegiance, abjuration, and declaration*, therein-mentioned, shall be prosecuted in any court whatsoever, for teaching and instructing youth, as a tutor or school-master, under the provisions and regulations of the act."

C H A P.

CHAPTER THE TENTH.

OF OFFENCES IN NOT COMING TO CHURCH.

FOR the better understanding of the offences of not coming to church, so far as the same relate to all persons in general, except such as are within the indulgence of THE TOLERATION ACT, I shall consider,—FIRST, How far persons are punishable for their own absence from the church. SECONDLY, How far they are punishable for suffering such absence in others.

In order to shew how far persons are punishable for their own absence, I shall consider the following particulars: FIRST, What forfeitures of money, lands, or goods, such offenders incur. SECONDLY, In what manner they are to be proceeded against for those forfeitures. THIRDLY, What other inconveniencies they are subject unto. FOURTHLY, By what means they may be discharged.

As to the FIRST POINT, I shall consider, *First*, What forfeitures of money; and, *Secondly*, What forfeitures of lands and goods such offenders are liable unto.

The forfeitures of money, to which they are liable, are threefold: 1. That of *twelve pence* for the absence of one Sunday, or other holy-day. 2. That of *twenty pounds* for the absence of every month contained in a conviction. 3. That of *twenty pounds* for the absence of every month after a conviction.

I. The forfeiture of TWELVE PENCE for the absence of *one Sunday* or other holiday.

Stat. 1. This depends upon 1 Eliz. c. 2. by which it is enacted, “ That all persons inhabiting within this realm, “ or any other the king’s dominions, shall diligently and “ faithfully, having no lawful or reasonable excuse to be absent, endeavour to resort to their parish church or chapel “ accustomed, or upon reasonable let thereof, to some usual “ place where common prayer and such service of God “ shall be used, in such time of let, upon every *Sunday*, and “ other days ordained and used to be kept as holy days, and “ then and there to abide orderly and soberly, during the “ time of the common prayer, preaching, or other service “ of God, there to be used and ministered, upon pain of “ punishment by the censures of the church, and also upon “ pain that every person so offending shall forfeit for every “ such offence twelve pence (*a*).”

Persons neglecting to go to church on *Sunday* shall forfeit *twelve pence* for every offence.

(a) By 3. Jac. c. 4. s. 27, 28.

this forfeiture may be levied by the churchwardens by distress by warrant of one justice.

In

In the exposition of this statute, the following opinions have been holden.

2. Leon. 5. Godb. 148. 29. El. c. 6. f. 5. Gib. 291. 964. *Seet. 2. First,* That the indictment needs not shew that the party had no reasonable excuse for his absence, or that he is an inhabitant within this realm, &c. but that the defendant, if he have any matter of this kind in his favour, ought to shew it.

2. Roll. 438. 455. 1. Bulst. 159. Gib. 358. 292. *Seet. 3. Secondly,* That if the spiritual court, proceeding upon this statute, refuse to allow a reasonable excuse, they may be prohibited; but that if they proceed wholly on their own canons, they shall not be at all controuled by the common law; unless they act in derogation from it, as by questioning a matter not triable by them, as the bounds of a parish, &c.; for they shall be presumed to be the best judges of their own laws.

1. Roll. 93. 1. Keb. 491. Godb. 148. Dalt. c. 45. f. 1. Sid. 301. 230. Gib. 292. 2. Keb. 124. *Seet. 4. Thirdly,* That he who misbehaves himself in the church, or misses either morning or evening prayer, or goes away before the whole service is over, is as much within the statute as he who is wholly absent; and that he who is absent from his own parish church, shall be put to prove where he went to church.

1. And. 139. Hob. 251. 2. Leon. 167. *Seet. 5. Fourthly,* That the offence in not coming to church consisting wholly in a non-feasance, and not supposing any act done, but barely the omission of what ought to be done, need not to be alledged in any certain place; for, properly speaking, it is not committed any where.

II. The forfeiture of TWENTY POUNDS for the absence of a whole month contained in a conviction.

Persons absent from church shall forfeit 20l. a month. Prec. of Declaration, Lutw. 201. *Seet. 6.* This depends upon 23. Eliz. c. 1. f. 5. by which it is enacted, "That every person, above the age of sixteen years, who shall not repair to some church, chapel, or usual place of common prayer, but forbear the same; contrary to the tenor of the said statute of 1. Eliz. c. 2. and being thereof lawfully convicted, shall forfeit to the king, for every month which he or she shall so forbear, twenty pounds."

In the exposition hereof it hath been resolved,

31. Co. 63. 2. Roll. 94. *Seet. 7. First,* That this statute, by inflicting twenty pounds for a month's absence, dispenses not with the forfeiture of twelve pence given by 1. Eliz. c. 2. for the absence of one Sunday; for both may well stand together, and the twelve

twelve pence is immediately forfeited upon the absence of each particular day.

Sec. 8. Secondly, That these words "being thereof lawfully convicted" are no more than the law would have implied if they had not been expressed, and therefore operate nothing. From whence it follows, that they neither cause the party to forfeit any thing by a conviction, unless judgment be given thereon, nor restrain the forfeiture to such offences only as are committed after a previous conviction, inasmuch as they mean no more than what the law provides of common right in every case, *viz.* That the party shall forfeit nothing till he be convicted. Lutw. 162,
11. Co. 57. 59.
1. Roll. 89,
233,
Dyer 160.
3. Bulst. 87.

Sec. 9. Thirdly, That he who is condemned on demurrer, or *nihil dicit*, is sufficiently convicted within the act; for whoever is adjudged, is convicted, though it follow not that every one who is convicted, is adjudged, &c. 11. Co. 58. 60.
1. Roll. 89. 90.

Sec. 10. Fourthly, That one who was sick for part of the time contained in an information upon this statute, shall not be at all excused by reason of such sickness, if it be proved that he was a recusant both before and after; for it shall be intended that he obstinately forbore during that time. C. Jac. 529.

Sec. 11. Fifthly, That the time of a month intended by the statute shall be computed not by the kalendar, but by the number of days, allowing twenty-eight days to each, according to the common rule of expounding statutes which speak generally of a month. Yel. 100.
Cro. Eliz. 835.
Cawley 61.

III. The forfeiture of TWENTY POUNDS for the absence of every month *after a conviction*.

Sec. 12. This depends upon 28th commonly called 29. Eliz. c. 6. f. 4. and the 3. Jac. 1. c. 4. f. 8. 3. by which it is enacted, "That every offender being convicted of not coming to church, contrary to the purport of the statutes above-mentioned, shall pay twenty pounds for every month after such conviction, until he shall conform himself, and come to church." Persons convicted of not coming to church shall pay twenty pounds for every month after conviction.

3. Lev. 333. Lut. 203. 2117. 2. Mod. 240. 1. And. 294. 11. Co. 63. 3. Keb. 742.
1. Ver. 143. 2. Ver. 711. L. Ray. 77. 210. 343. 371. 382. 1224.

As to the SECOND BRANCH of this head, *viz.* What forfeiture of lands and goods such offenders are liable to.

If persons convicted shall not pay the penalties, the king may seize all their *personal* and two thirds of their *real* estates.

Sec't. 13. This depends also upon 29. Eliz. c. 6. f. 4. and 3. Jac. 1. c. 4. f. 8, 9. by which it is enacted, "That if the offender shall make default of payment of the twenty pounds, both for every month contained in the conviction, and also for every month subsequent, during which he shall not conform himself to the church, the king shall take, seize, and enjoy all his goods, and two parts of his hereditaments, leases, and farms, leaving the third part only of the same hereditaments, leases, and farms, to and for the maintenance and relief of the same offender, his wife, children, and family, notwithstanding any prior conveyance thereof, made by such offender, with power of revocation, or to the use of himself or his family."

And the king may refuse the 10l. a month, though tendered, and seize two thirds of the offender's estate.

By the 3. Jac. 1. c. 4. f. 11. it is also enacted, that "The king may refuse the penalty of twenty pounds a month, though it be tendered according to law, and thereupon seize two parts of all the hereditaments, leases, and farms, which at the time of such seizure shall be, or afterwards shall come to any such offender, or to any other to his use, or in trust for him, or at his disposition, or whereby, or in consideration whereof, he or his family shall be relieved, maintained, or kept, leaving unto him his chief mansion-house, as part of his third part."

In the construction of these statutes the following points have been resolved.

1. Jones 24, 25.
Cawl. 171,
172.

Sec't. 14. *First*, That the king by making the election given him by 3. Jac. 1. to seize the offender's hereditaments, &c. waives the benefit of the twenty pounds a month, and the power of seizing the offender's goods.

12. Co. 1, 2.
1. Leon. 98.
1. Roll. 7.

Sec't. 15. *Secondly*, That a recognizance or bond taken by such offenders, either in their own names or in the names of others to their use, are within the 29. Eliz. c. 6.; for the words are, "That the king shall take, seize, and enjoy all the goods, &c." which, in an act of parliament, will include the whole personal estate; and though a *chose in action* cannot properly be said to be "taken" or "seized," yet may it properly enough be said to be "enjoyed."

Owen 37.
1. Leon. 97.
Cawl. 107.

Sec't. 16. *Thirdly*, That no copyhold lands are within 29. Eliz. c. 6. (and by the same reason it seemeth that they are not within 3. Jac. 1. c. 4.) in respect of the prejudice which would accrue to the lord by the loss of his services, &c.

Sec't.

Sec. 17. Fourthly, That the profits of the land seized by the king by force of 29. Eliz. for the non-payment of the twenty pounds a month, ought not to be applied to the satisfaction thereof, but that the lands ought to remain in the king's hands by way of pledge, till the whole forfeiture be paid some other way. But this construction of the statute seeming over severe, it was provided by 3. Jac. 1. c. 4. f. 5. "That the profits of the said lands should go towards the satisfaction of the twenty pounds."

C. Eliz. 845.
2. Roll. 25.
Palm. 41.
W. Jones 24.

Sec. 18. Fifthly, It hath been questioned, whether an estate conveyed by another in trust for a recusant, be liable to be seized by force of the said statute of 29. Eliz. because it expressly avoids such conveyances only as are made by the recusant himself *to his own use, &c.* And perhaps if it shall plainly appear, that an estate is settled *bona fide* in trust for a recusant, by some friend of his, upon some other view, and not merely with an intent to evade the statute, it may be reasonable to exempt such a conveyance out of the meaning of it. However, it is clear from the express words of 3. Jac. 1. c. 4. f. 11. "That the king, upon his waiving the forfeiture of the twenty pounds a month, may seize and take to his own use two parts of all the hereditaments, &c. which shall come to any such offenders, or to others to their use, or in trust for them, or be at his or her disposition, or where by such offender or her family shall be relieved, maintained, and kept; and also all other hereditaments, &c. in any wife or at any time liable to such seizure, or to the penalties aforesaid, and the same to retain till every such offender shall conform, in lieu and full recompence of the twenty pounds monthly that during such seizure and re-tainer shall incur." Also it is said, that the king may seize an estate which is granted to a recusant in trust for another; and it is certain that the statute has made no express provision for the *cestui que trust*.

Lane 105, 106.
Cawl. 169.
12. Co. 1. 2.

Lane 39.

As to THE SECOND GENERAL HEAD of this Chapter, viz. In what manner offenders of this nature are to be proceeded against for the forfeitures above mentioned, I shall consider, FIRST, How they are to be proceeded against for the said forfeiture of twelve pence for the absence of every Sunday, &c. SECONDLY, In what manner for the said forfeiture of twenty pounds for the absence of every month contained in a conviction; THIRDLY, In what manner for the said forfeiture of twenty pounds for the absence of every month after a conviction; and, FOURTHLY, In what manner they are to be proceeded against for the said forfeitures of land and goods.

I. As to the recovery of the said forfeiture of *twelve pence* for the absence of every *Sunday*.

Sec. 19. It was enacted by 1. Eliz. c. 2. "That the same should be levied by the church-wardens of the parish where such offence should be done, to the use of the poor of the same parish, of the goods, lands, and tenements of such offenders, by way of distress."

One justice, upon the confession of the party, or the oath of one witness, may levy the penalty of *twelve pence* for every *Sunday* the party is absent.

Sec. 20. But this being defective in not shewing by whom, or in what manner such offenders should be convicted, or by whom the warrant for levying the said forfeiture should be granted, it was farther enacted by 3. Jac. 1. c. 4. f. 27. "That it shall be lawful for any one justice of the peace of the limit, division, or liberty, wherein the said party shall dwell, upon the confession of the party, or the oath of one witness, to call the said party before him, and if he shall not make a sufficient excuse, and due proof thereof, to the satisfaction of the said justice of peace, that it shall be lawful for the said justice of peace to make a warrant to the church-warden of the said parish, where the said party shall dwell, to levy *twelve pence* for every such default, by distress and sale of the offender's goods, rendering the overplus to the said offender; and that in default of such distress, it shall be lawful for the said justice of peace to commit every such offender to prison until the said forfeiture shall be paid, which shall be employed to the use of the poor of the parish wherein the offender shall be resident or abiding at the time of the offence."

II. In what manner the said offenders are to be proceeded against for the said forfeiture of *twenty pounds* for the absence of every month contained in a conviction.

I shall consider, FIRST, In what manner it may be recovered at the king's suit by way of indictment; SECONDLY, In what manner by way of action or information; and, THIRDLY, In what manner at the suit of the informer.

AND FIRST, as to the recovery hereof at the suit of the king by way of *indictment*.

The indictment of a recusant may be at *sessions*, or in the superior courts. 2. Roll. 94. 11. Co. 63. Cawl. 66, 67. 82, 83.

Sec. 21. By the 23. Eliz. c. 1. f. 9. "The justices of oyer, assize, gaol-delivery, and *quarter sessions* of the peace, might enquire of and determine these offences, within one year and a day:" But by 29. Eliz. c. 6. f. 2. it was ordained, "That all such convictions should be in the king's bench, or at the *assizes*, or general *gaol-delivery*, and not elsewhere:" However, by 3. Jac. 1. c. 4. f. 7. the jurisdiction of the sessions is revived.

Sec.

Sec. 22. By 29. Eliz. c. 6. f. 5. and 3. Jac. 1. c. 4. f. 7. And if the offender do not appear on *proclamation*, his default shall be a *conviction*.
 Upon an indictment at the assizes, gaol-delivery, or general sessions of the peace, *proclamation* shall be made that the offender render himself to the sheriff before the next assizes, gaol-delivery, or sessions; and that if he shall not then appear of record, upon such default recorded, the same shall be a conviction in law, as if a trial by verdict on the indictment had been recorded." And by f. 9. Salk. 145.
 "Every such conviction shall be certified into THE EXCHEQUER, &c."

In the construction hereof it hath been resolved,

Sec. 23. First, That such a conviction shall not be looked on as a judgment; for the words are, "it shall be a conviction in law, as if a trial, &c. had been recorded;" and consequently that it cannot be reversed by writ of error, which cannot be brought on any record which is not a judgment; and therefore that the party has no other remedy against an insufficient conviction, but to remove it into the exchequer, and quash it there. Also upon the same ground it has been holden, that a forfeiture due to the king by force of such a conviction, shall not be taken to be within the exception of a general pardon, which excepts "all forfeitures, &c. converted to a debt by judgment." 1. Vern. 355. Ray. 434. Vide Salk. 145. 11. Co. 65. Inf. f. 42.

Sec. 24. Secondly, That if the proclamation do not pursue the statute, as if it appoint that the body shall be rendered at next sessions, &c. whereas by the statute it ought to order a render to the sheriff, and that before the next sessions, the conviction is insufficient. Palm. 40, 41. Bridg. 123. 3. Lev. 333. Lut. 1117.

Sec. 25. Thirdly, That an actual personal appearance of the defendant at the next sessions, &c. will no way avail him, unless the same be entered of record. Cawley 164. Pop. 29. Kellw. 180.

Sec. 26. It hath been holden, That a man cannot be convicted by force of this statute upon a default on a proclamation, &c. in the king's bench; because this court is not mentioned in the statute.—But perhaps this opinion may justly be questioned, because the court of king's bench being the supreme court of assize, and gaol-delivery, &c. in the county where it sits, it seems that a statute, by giving any power to the courts of assize or gaol-delivery, does impliedly give the same to the court of king's bench, unless it have some restrictive words to the contrary. Hob. 205. Sum. 156. C. Car. 465. 2. Lev. 179. 2. Mod. 128.

Sec. 27. If the defendant do appear, there is no doubt but that the proceedings ought to be according to the common

A judgment, whether upon an *indictment* or *proclamation*, shall not be reversed for defect of form.

C. Car. 504.
Rayn. 434.

mon course of law upon other indictments in all respects, except those which are within the restraint of 3. Jac. 1. c. 4. f. 16, 17. by which it is enacted, "That no such *indictment*, nor any *proclamation*, outlawry, or other proceeding thereupon, shall at any time hereafter be avoided, discharged, or reversed. by reason of any default in form or lack of form, or other defect whatsoever (other than by direct traverse to the point of not coming to church, &c.); but the same indictment shall stand in force and be proceeded upon; any such default of form, or other defect whatsoever notwithstanding, unless the party so indicted shall conform, &c."

However it hath been resolved,

11 Co. 59. 65.
1. Roll. 95.
C. Jac. 480.

Sec. 28. First, That the party is only restrained from taking advantage of defects in the record itself, and that he may plead any collateral matter; as a pardon, or *autrefois convict*, &c.

C. Car. 504.
Show. 309.
5. Mod. 141.
3. Keb. 591.

Sec. 29. Secondly, That he may even reverse a judgment after verdict for any such defect, in the record itself, as tends to the king's prejudice; as the omission of a *captiatur*, &c.; and that he may reverse an outlawry for any common defect, upon putting in bail, and traversing the indictment as to the point of not coming to church; which is very agreeable to the purport of the whole clause, the latter part whereof seems manifestly to qualify the generality of the former.

SECONDLY, As to the recovery of the said forfeiture by way of *action* or *information* at the king's suit,

The forfeitures for recusancy, whether of *twelve pence* or *twenty pounds*, may be recovered by *action* or *information*.

Sec. 30. By 35. Eliz. c. 1. f. 10. "All and every the said pains, duties, forfeitures, and payments, shall and may be recovered and levied to her majesty's use, by action of debt, bill, plaint, information, or otherwise, in any of the courts commonly called the king's bench, common pleas, or exchequer, in such sort and in all respects as by the ordinary course of the common laws of this realm, any other debt due by any such person in any other case should or may be recovered or levied, wherein no *essoins*, protection, or *wager of law*, shall be admitted or allowed."

(a) Dr. Foster's Case,
11. Co. 61, 62.
Vide sup. c. 1.
f. 13.

Sec. 31. It is said, (a) That the principal end of making this clause, was to enable the queen to proceed against the husband for the recusancy of his wife, which she could not do by virtue of any of the former statutes, by which she had no other way of proceeding but by indictment, and consequently could not charge the husband for the forfeiture of the

the wife, because she could not make him a party to the suit, as she may by force of this statute. However, it is said, that on a conviction of the wife upon an indictment, the lands and leases which the husband has in her right may be seized by the exchequer-procefs.

C. Jac. 482.
Bridgm. 122.
seems contrary.

THIRDLY, As to the manner in which an informer may proceed for the forfeitures aforesaid.

SECT. 32. By 23. Eliz. c. 1. s. 11. "All forfeitures of any sums of money limited by that act shall be divided into three equal parts, whereof one third shall be to the queen, to her own use; one other third to the queen for the relief of the poor in the parish where the offence shall be committed, to be delivered by the warrant of the principal officers in the receipt of the exchequer, without further warrant from her majesty; and the other third to such person as will sue for the same, in any court of record, by action of debt, bill, plaint, or information, in which suit no essoin, &c. shall be allowed; and that every person which shall forfeit any sums of money by virtue of that act, and shall not be able, or shall fail to pay the same within three months after judgment thereof given, shall be committed to prison, there to remain until he have paid the same sums, or conform himself to go to church, and there do as is aforesaid."

And the penalties shall be distributed in THIRDS to the King, the poor, and the informer.

2. Leon. 167.
29. Eliz. 6.
f. 7.

SECT. 33. It has been objected (a), that this clause shall not extend to the said forfeiture of twenty pounds a month for not coming to church, because the same is by the former part of this statute given expressly to the queen, whereas the forfeitures for saying or hearing mass, and keeping an unlicensed school-master, are inflicted by the same statute indefinitely, and not expressly given to any one. From which it is argued (b), that this latter clause of distribution ought only to be applied to the said indefinite clauses, and not to take from the queen any part of that which was expressly given her before. Yet it has been answered and resolved (c), that it shall equally extend to all; for the limitation of the forfeiture to the queen is mere surplus, and no more than the law would have implied; *et expressio eorum, quæ tacite insunt, nihil operatur*.

(a) Dr. Foster's Case, 11. Co. 58. 2.

(b) See 1 Roll. Rep. 89.

(c) Dr. Foster's Case, 11. Co. 60. 2.

SECT. 34. Also it has been resolved (d), that an informer may sue not only for the third part which belongs to him, but for the whole penalty in the behalf of himself and the king, and that the judgment shall be, that they shall recover, &c.

(d) Cuff's Case, 1. And. 139, 140. But see Bk. 2. c. 26. f. 76.

Sett. 35. Also it hath been adjudged, that neither the above-mentioned clause of 29. Eliz. c. 6. which orders, "That all
Sup. f. 13, 33. "convictions upon 23. Eliz. shall be certified into the Ex-
 "chequer, and also that the offender shall pay to the queen
 "twenty pounds for every month contained in the indict-
 "ment, &c." nor the said clause in the 35. Eliz. c. 1. by
 which it is enacted, "That all the said pains, &c. shall be
 "recovered to the queen's use," do take away the suit of *the*
informor against one not proceeded against by the king, or
 the third part of the penalty given him by 23. Eliz. c. 1.:
11. Co. 61, 62. For the plain purport of both these acts is to further the
1. Roll. 92, 93. punishment of recusants; and therefore, inasmuch as they
 are in the affirmative, and consistent with 23. Eliz. they
 shall not be construed to abrogate any part of it.

Sett. 36. Moreover it is manifest, that 29. Eliz. c. 6. ex-
 tends only to the king's suit by indictment, for the word
 "indictment" is mentioned almost in every clause.

Hob. 204. *Sett.* 37. And it also follows from hence, that the second
Con. 11 Co. 61. paragraph of the said statute of 29. Eliz. which enacts, "That
 "convictions for this offence shall be only at assizes, gaol-
 "delivery, or the king's bench," retrains only convictions
 upon indictments, and consequently does not any way im-
 peach the jurisdiction of the common pleas, or exchequer,
 as to the informations, &c.

11. Co. 59, 65. *S. Et.* 38. It seems the better opinion upon comparing all
B. 2. c. 26. f. the Books together, which differ much from one another
 63. both in stating the cases, and giving the reasons of the judg-
1. Roll. 93. ments relating to this matter, that a conviction at the king's
C. Jac. 481. suit, whether strictly regular or erroneous, may be pleaded
Noy 117. to a suit by an informer, because, while it stands in force,
Lane 60. it makes the party liable to the forfeiture of twenty pounds
Palm. 39, 40, a month, and no one ought to be punished twice for the
 41. same offence. But it hath been resolved, that an erroneous,
2. Roll. 108. and strongly holden, that a regular conviction by procla-
Bridg. 122. mation cannot be pleaded to a new suit by the king, because
Lew. 208. such a conviction is of no greater effect than a conviction by
 verdict, and consequently the king may waive it and begin
 anew.

C. Jac. 482. *Sett.* 39. But it seems very doubtful, whether the con-
Bridg. 120, 122. viction of a *feme covert* upon an indictment can be pleaded
 2. *Koll.* 108. to an information against her and her husband; because the
Vide sup. c. 1. husband is not liable to pay the forfeiture recovered upon an
f. 13. indictment.
1. Bag. Abr.

Sec. 40. It seems that the ordinary method of recovering the said forfeiture of twenty pounds for every month contained in a conviction, either at the suit of the king or of an informer, may sufficiently appear from what has been already said; but there is an extraordinary remedy provided by the same statute of 29. Eliz. c. 6. to enforce the party to take care of the payment of the forfeiture of the twenty pounds for every month contained in an indictment whereon he shall be convicted, by making his lands and goods liable to be seized by the king for the non-payment thereof into the exchequer, upon such of the Terms of *Easter* or *Michaelmas* as shall be next after his conviction. But this extends not to a conviction by way of action, or information, as more fully appears from the two next sections.

III. In what manner the forfeiture of twenty pounds for the absence of every month after a conviction is to be recovered.

Sec. 41. It seems needless to enquire how far it may be recovered by an action or information for it at the king's suit, inasmuch as the said statutes of 29. Eliz. c. 6. & 3. Jac. 1. have made a most effectual provision for the payment of it, by expressly enacting, "That every such offender, being once convicted, shall for every month after such conviction, without any other indictment or conviction, pay into the EXCHEQUER twice in the year, viz. in every *Easter* and *Michaelmas Term*, as much as shall then remain unpaid, after the rate of twenty pounds for every month after a conviction; and that for a default herein the king may seize all the goods, and two parts of the hereditaments of such an offender, &c."

After conviction on an indictment, if the offender do not conform, he shall pay 20l. a month, and, in default, the King may seize his goods and two thirds of his lands.

Sec. 42. But it seemeth that these clauses extend not to any conviction upon an information or action, &c. but only to a conviction upon an indictment; for there is no other suit referred to besides that of indictment. Also it is said, that the said clauses extend to no convictions by verdict or otherwise, unless judgment be given thereon; because till then nothing is forfeited. And from the same ground it seems to follow, that they would not have extended to a conviction by default upon proclamation, if there had been no other words in the statute to this purpose than those by which it is enacted, "That such a default recorded shall be as sufficient a conviction in law of the said offence whereof the party standeth indicted, as if upon the same indictment a trial by verdict thereupon had proceeded and been recorded;" which words of themselves can by no means make such a conviction amount to a judgment after verdict, without

Cawley 102, 103.

Vide supra, sect. 8.

Vide infra, sect. 56.

See 29. El. 6. f.
6.
3. Jac. 1. c. 4. f.
7, 8, 9.
Caw. 103, 104.

without which there can be no forfeiture upon any other conviction; and therefore it seemeth that the forfeiture caused by such a conviction must depend upon the other clauses of the said statutes, and the constant tenor of our law books, which seem to suppose that a person so convicted shall be liable to the said forfeitures, as much as ~~he~~ against whom a judgment is expressly given.

IV. In what manner offenders of this nature are to be prosecuted for the forfeiture of lands or goods.

Vide ante, sec.
13, 14, 15, 17,
18, 40, 41.

Sec. 43. It appears, that the king hath his election, either to seize all the goods and two parts of the hereditaments and leases of the offender, upon his making default in the payment of twenty pounds, both for every month contained in an indictment whereon he shall be convicted, and also for every month subsequent, or else to refuse the said penalty of twenty pounds a month, and thereupon to seize two parts of the hereditaments and leases of the offender.

(a) Ante, sec.
42.

Sec. 44. It also appears (a), that the king hath this advantage of seizing the lands and goods of the offender upon no other conviction but such as followeth an indictment, nor even upon such a conviction without a judgment, unless it be caused by a default upon a proclamation. Therefore I shall add no more to this head, except these two following observations :

1. Inst. 573.
8. Co. 169.
Plow. 486.

Sec. 45. First, That the king cannot seize the lands till it appears by the return of an inquisition, to that purpose to be awarded, of what lands, &c. the offender was seized, because the king's title to lands ought always to appear of record.

B. Cor. 2. 14.
2. Co. 45. 47. 55.
69.
1. Rol. 7.
2. R. Abr. 184.

Sec. 46. Secondly, That the king, according to the better opinion, may seize the goods, but cannot grant them over, without such an inquisition.

As to the THIRD GENERAL HEAD of this Chapter, viz. What disabilities and other inconveniencies offenders of this kind are liable unto,

No recusant
convict shall
practise THE
LAW, or phy-
sick, or hold any
military or na-
val situation,
on pain of 100l.

Sec. 47. By 3. Jac. 1. c. 5. f. 8. " No recusant convict
" shall practise the common law of this realm as a counsellor,
" attorney, or solicitor in the same; nor shall practise the
" civil law, as advocate or proctor; nor practise physick;
" nor use or exercise the trade or art of an apothecary;
" nor be judge, minister, clerk, or steward of or in any
" court,

"court, or bear any office in camp, troop, or company of soldiers, or in any ship or fortrefs, but shall be utterly disabled for the same, and forfeit for every such offence one hundred pounds."

Sett. 48. By 3. Jac. 1. c. 5. f. 22. "Such recusants as shall be convicted at the time of the death of any testator, or at the time of granting of any administration, shall be disabled to be executors or administrators; and no such persons shall be guardians to any child, &c." and shall be disabled to be executor or administrator.

Sett. 49. And by 23. Eliz. c. 1. it is enacted, "That every person forbearing the church twelve months, shall on certificate thereof into the king's bench by the ordinary, a justice of assize and gaol-delivery, or a justice of peace of the county where such offender shall dwell or be, be bound with two sufficient sureties in the sum of two hundred pounds at the least to the good behaviour, and so continue bound until such offender shall conform himself, &c." Persons absenting church for twelve months may be bound to good behaviour.

As to the FOURTH GENERAL HEAD of this Chapter, viz. By what means offenders of this nature may be discharged from the said forfeitures, &c.

Sett. 50. By 23. Eliz. c. 1. f. 10. "Every person guilty of the above-mentioned offences, who shall, before he be thereof indicted, or at his arraignment or trial, before judgment, submit and conform himself before the bishop of the diocese where he shall be resident, or before the justices where he shall be indicted, arraigned, or tried (having not before made like submission at any his trial, being indicted for his first like offence), shall upon his recognition of such submission in open assizes, or sessions of the county where such person shall be resident, be discharged of all and every the said offences against the said statute, &c." But if a recusant shall, at any time before judgment, conform, he shall be discharged.

Sett. 51. And by 29. Eliz. c. 6. f. 6. "Whensoever any such offender shall make submission, and become conformable, according to the form limited by the statute of 23. Eliz. c. 1. or shall fortune to die, then no forfeiture of twenty pounds for any month, or seizure of the lands of the same offender, from and after such submission and conformity, or death, and full satisfaction of all the arrears of twenty pounds monthly, before such seizure due or payable, shall ensue, or be continued against such offender, so long as the same person shall continue in coming to divine service, according to the intent of the said statute." If a recusant shall conform or die, no forfeiture of 20l. a month, or seizure of lands shall ensue.

Sett.

1. Roll. 94.

Stat. 52. But this statute being thought not to give sufficient encouragement to such persons to conform to the Church, because by the most favourable construction that could be made, it still obliged them to pay such ~~dis~~ as were due to the king by force of a judgment, it was enacted by 1. Jac. 1. c. 4. f. 2. "That a recusant, conforming himself according to the meaning of the above-mentioned statutes, &c. shall, during such conformity, be discharged of all penalties which he might otherwise sustain by reason of his recusancy."

Raym. 391,

465.

2. Jon. 187.

1. Mod. 213.

1. Roll. 95.

2. Bull. 324.

Stat. 53. And it hath been resolved, that such conformity may, by force of this statute, be pleaded, as well to the suit of an informer as to that of the king; and that after judgment it will be a good ground for an *audita querela* against an informer; and also may be pleaded against the king before execution awarded.

Bavil. 130.

2. Show. 331.

Stat. 54. However, there seems to be no remedy for such a person to get a restitution of such of the profits of his lands as have been actually taken by the king.

If an heir be no recusant, or conform, he shall be freed from the penalties of his ancestor's recusancy.

Lane 92, 93, 106.

Cawley 109, 110.

Stat. 55. It seemed very doubtful, before 1. Jac. 1. c. 4. how far the lands of an heir were chargeable with the forfeitures incurred by his ancestor in respect of his recusancy; but this seems to be for the most part cleared by the said statute 1. Jac. 1. c. 4. f. 3. which enacts, "That if any recusant shall die, his heir being no recusant, every such heir shall be freed and discharged from all and singular the penalties, charges, and incumbrances happening in respect or by reason of his or her ancestor's recusancy: and if at the decease of any such recusant, his heir shall be a recusant, and after shall conform and take the oath of supremacy before the archbishop or bishop of the diocese, such heir shall also be freed and discharged."

Recusants within sixteen years of age at the death of the ancestor, conforming afterwards, are discharged.

By 1. Jac. 1. c. 4. f. 4. "Provided, that if the heir of any recusant shall happen to be within the age of sixteen years at the time of the decease of his or her ancestor, and shall, after he or she attain sixteen years, become a recusant, any such heir shall not be freed and discharged from the penalties, charges, and incumbrances of his or her ancestor's recusancy, until he or she shall submit and conform."

But if 1000 thirds are seized in the life of the ancestor, the lands shall be holden till the penalty is paid,

By 1. Jac. 1. c. 4. f. 5. it is further enacted, "That when any seizure shall be had of the two parts of any lands, &c. of any such recusant, as aforesaid, and such

"recusant

“recusant shall die (the debt or duty by reason of such recusancy not satisfied), the same two parts shall continue in the king’s possession until the residue of the said debt or duty be satisfied. But the king shall not seize or extend any third part descending to any such heirs, or any part thereof, either by reason of the recusancy of his or her ancestor, or of the recusancy of any such heir.”

Sec. 56. It seems, by the manifest purport of this statute, that the heir of a recusant, being also a recusant himself, has no remedy, but by conforming, to free his fee-simple lands from any of the forfeitures incurred by the conviction of his ancestor, whether the lands were seized in the ancestor’s life or not.

Sec. 57. However it is said, that the lands in fee-tail, which he claims from such ancestor, are no way chargeable, after the death of the ancestor, with any forfeitures upon a conviction by proclamation (which has no greater effect than a verdict recorded), but only with such as are due upon a judgment; which, as it is agreed, charge an heir in tail by force of 33. Hen. 8. c. 39. f. 29. which makes an heir chargeable with the debts of his ancestor by judgment, recognizance, obligation, or other specialty. But perhaps the authority of those opinions may justly be questioned: for though a conviction by proclamation amount not to a judgment, yet surely it cannot be inferior to an obligation. And therefore, perhaps, the Books cited in the margin are misreported in this particular, and the more proper distinction may be this: That an heir in tail is chargeable only with the forfeitures of those months which are contained in the indictment itself, on which a judgment is afterwards given, or a conviction by proclamation recorded, and not for the months subsequent to such conviction or proclamation, inasmuch as the first seem to be debts appearing of record, the latter not. And the same distinction seems applicable to such lands in tail of an heir who conforms, as were seized in the ancestor’s life; but it is clear that such only of his lands as were so seized are in any case liable, whether he claim them in fee-simple or tail.

Moor 523.

1 Roll. 94.

C. Eliz. 846.

Cawl. 109, 110.

150, 159, 152.

Vide sup. f. 32.

CHAPTER THE ELEVENTH.

OFFENCE OF SUFFERING ABSENCE FROM CHURCH.

4. Can. 52.
5. Burn. E. L.
420.

HAVING shewn how far all persons in general are punishable for their own absence from the church, I am now to shew how far they may be punished for the absence of others.

If a master keep a servant or lodger who neglects church a month, he is liable to 10l. a month. See post. ch. 12. f. 28.

Sett. 1. By 3. Jac. 1. c. 4. f. 32. "Whosoever shall willingly maintain, retain, relieve, keep, or harbour, in his house, any servant, sojourner, or stranger, who shall not go to some church or chapel, or usual place of common prayer, to hear divine service, but shall forbear the same for the space of one month together, not having a reasonable excuse, &c. shall for every month that he shall keep such servant, &c. forfeit ten pounds."

If a master, &c. retain any who neglect church, he is liable.

Sett. 2. By 3. Jac. 1. c. 4. f. 33. "Whosoever shall retain or keep in his service, fee, or livery, any person which shall not go to or repair to some church, chapel, or usual place of common prayer, to hear divine service, but shall forbear the same by the space of one month together, shall forfeit ten pounds for every month, &c."

But a son or a daughter who charitably keep a poor father or mother, shall not be liable,

Sett. 3. But by 3. Jac. 1. c. 4. f. 34. it is provided, "That this act shall not in any wise extend to punish any person for maintaining, retaining, relieving, keeping or harbouring his father or mother wanting, without fraud or covin, other habitation or sufficient maintenance; or the ward of any such person; or any person that shall be committed by authority to the custody of any by whom they shall be so maintained, retained, relieved, &c."

The offence may be tried either at sessions or in the superior courts.

Sett. 4. And by 3. Jac. c. 4. f. 36. "This offence may be enquired of, heard, and determined before the king's bench, at the assizes, gaol delivery, and in the general or quarter sessions of the county or place where the offence shall be committed."

CHAPTER THE TWELFTH.

OF POPISH RECUSANCY.

AND now we are come to offences against the established church more immediately relating to those of THE POPISH RELIGION.

† But as most of those penalties to which *Papish Recusants* are exposed may now be avoided, by complying with the injunctions of a modern act of parliament, it may be necessary to premise, that, by 31. Geo. 3. c. 32. s. 3. “Persons professing the *Roman Catholick religion* may personally appear in any of his majesty’s courts of chancery, king’s bench, common pleas, or exchequer, at Westminster, or in any court of general quarter sessions of and for the county, city, or place, where such person shall reside, and there in open court, between the hours of nine in the morning and two in the afternoon, take, make, and subscribe the following declaration and oath, viz.

Roman Catholics may, make the following declaration on oath,

“ I *A. B.* do hereby declare, that I do profess the Roman Declaration. Catholick religion.

“ I *A. B.* DO SINCERELY PROMISE AND SWEAR, That I will be faithful and bear true allegiance to his majesty king *George the Third*, and him will defend to the utmost of my power against all conspiracies and attempts whatever that shall be made against his person, crown, or dignity; and I will do my utmost endeavour to disclose and make known to his majesty, his heirs, and successors, all treasons and traitorous conspiracies which may be formed against him or them: AND I DO FAITHFULLY PROMISE to maintain, support, and defend, to the utmost of my power, the succession of the crown; which succession, by an act intitled, *An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject*, is and stands limited to the *princess Sophia* electress and duchess dowager of *Hunover*, and the heirs of her body, being Protestants; hereby utterly renouncing and abjuring any obedience or allegiance unto any other person claiming or pretending a right to the crown of these realms: AND I DO SWEAR, that I do reject and detest, as an unchristian and impious position, that it is lawful to murder or destroy any person or persons whatsoever, for or under pretence of their being hereticks or infidels;

Oath of allegiance, obedience, and abjuration, to be taken by persons professing the *Catholick faith*.

“ and

" and also that unchristian and impious principle, that faith is
 " not to be kept with hereticks or infidels: AND I FURTHER
 " DECLARE, that it is not an article of my faith, and that I
 " do renounce, reject, and abjure the opinion, that princes
 " excommunicated by the pope and council, or any au-
 " thority of the SEE OF ROME, or by any authority
 " whatsoever, may be deposed or murdered by their sub-
 " jects, or any person whatsoever: AND I DO PROMISE, that
 " I will not hold, maintain, or abet any such opinion, or
 " any other opinions contrary to what is expressed in this
 " declaration: AND I DO DECLARE, that I do not believe that
 " the POPE OF ROME, or any other foreign prince, prelate,
 " state, or potentate, hath, or ought to have, any temporal
 " or civil jurisdiction, power, superiority, or pre-eminence,
 " directly or indirectly, within this realm: AND I DO SO-
 " LEMNLY, in the presence of God, profess, testify, and de-
 " clare, that I do make this declaration, and every part
 " thereof, in the plain and ordinary sense of the words of
 " this oath, without any evasion, equivocation, or mental re-
 " servation whatever; and without any dispensation already
 " granted by the POPE, or any authority of the SEE OF
 " ROME, or any person whatever; and without thinking
 " that I am or can be acquitted before God or man, or ab-
 " solved of this declaration, or any part thereof, although
 " the pope or any other person or authority whatsoever
 " shall dispense with or annul the same, or declare that it
 " was null or void."

The officer of
 the court shall
 deliver certifi-
 cates of the de-
 claration and
 oath having
 been made,
 which shall be
 sufficient evi-
 dence.

By 31. Geo. 3. c. 32. f. 3. " The said DECLARATION and
 " OATH shall be subscribed by the person taking and making
 " the same with the name at length, if such person can write,
 " or with his mark, the name being written by the officer,
 " where such person cannot write, such person or such of-
 " ficer, as the case may be, adding the title, addition, and
 " place of abode of such person, and shall remain in such
 " court of record: and the proper officer of such court re-
 " spectively with whom the custody of such record shall re-
 " main, shall make, subscribe, and deliver a certificate of such
 " declaration and oath having been duly made, taken, and
 " subscribed, to the person who shall have so made, taken,
 " and subscribed the same, if the same shall be demanded,
 " immediately; for which certificate there shall be paid no
 " greater fee or reward than two shillings; and such certi-
 " cate, upon proof of the certifier's hand, and that he acted
 " as such officer, shall be competent and sufficient evidence
 " of such person's having duly made, taken, and subscribed
 " such declaration and oath, unless the same shall be
 " falsified."

† By 31. Geo. 3. c. 32. f. 2. "The said officer with whom such records are kept as aforesaid, shall yearly, on or before the 25th December, transmit to the clerk of his Majesty's most honourable privy council, lists of the persons, with their titles, additions, and places of abode, who shall have made and subscribed such declaration and oath in the preceding year."

Lists of persons who have taken the oath to be transmitted to the privy council.

† And by 31. Geo. 3. c. 32. f. 3. "No person professing the Roman Catholick religion, who shall take and subscribe the oath therein appointed to be taken and subscribed, shall be convicted or prosecuted upon, or shall be liable to be prosecuted upon, the said statutes of 1. Eliz. c. 2.; the 23. Eliz. c. 1.; the 29. Eliz. c. 6.; the 35. Eliz. c. 2.; the 1. Jac. 1. c. 4.; the 3. Jac. 1. c. 4.; the 3. Jac. 1. c. 5.; or the 7. Jac. 1. c. 6.; or any of them, or upon any other statute, or any other law of this realm, by indictment, information, action of debt, or otherwise; or shall be prosecuted in any ecclesiastical court for not resorting or repairing to his or her parish church or chapel, or some other usual place of common prayer, to hear divine service, and join in public worship according to the forms and rites of the Church of England, as by law established."

No person taking the oath above-mentioned shall be prosecuted on any statute against nonconformity in worship

But, for the better understanding of this subject, I shall consider, **FIRST**, The above-mentioned offence of not coming to church, so far as it particularly concerns *Roman Catholics*. **SECONDLY**, The offence of saying or hearing mass, or other Popish service. **THIRDLY**, The offence of not making a declaration against Popery. **FOURTHLY**, The offence of promoting or encouraging the Popish religion.

AND FIRST as to the said offence of not coming to church, so far as it particularly concerns those of the Popish religion, who in respect hereof are commonly called *Popish recusants*; I shall consider, *First*, How far such recusants are punishable in their own persons. *Secondly*, How far they make others liable to be punished.

Skin. 99.

Keb. 7.

3. Burn. E. L. 120.

I. How far *Popish recusants* are punishable in their own persons.

It is to be observed, that they are not only liable to all the forfeitures and disabilities and other inconveniencies mentioned in the Tenth Chapter, but also to many particular disabilities, restraints, forfeitures, and other inconveniencies to which no others are liable.

FIRST, they are put under the following disabilities:
 1. That of bringing an action. 2. That of presenting to a church. 3. That of bearing any public office or charge. 4. That of claiming any part of a husband's personal estate. 5. That of claiming an estate by courtesy, or by way of dower, after a marriage against law.

SECONDLY, They are put under the following restraints:
 1. From going above five miles from home. 2. From coming to court. 3. From keeping arms. 4. From coming within ten miles of London.

THIRDLY, They are liable to the following forfeitures:
 1. That of two parts of a jointure or dower. 2. That of twenty pounds for not receiving the sacrament yearly after conformity. 3. That of one hundred pounds for an unlawful marriage. 4. That of one hundred pounds for an omission of lawful baptism. 5. That of twenty pounds for an unlawful burial.

LASTLY, They are subject to the following inconveniences:
 1. That their houses may be searched for reliques, whether they be men or women. 2. That if they be women and married, they may be committed, &c.

Popish recusants convicted are disabled to bring actions.

See 1. Jac. 1. c. 4.
 11. Mod. 357.
 366.
 Ray. 391.
 2. Jones 187.

4. Com. 55.
 124.

Stat. 1. As to THE FIRST of the said disabilities, viz. that of bringing an action, it is enacted by 3. Jac. 1. c. 5. f. 11, 12. "That every Popish recusant convict shall stand to all intents and purposes disabled, as a person lawfully excommunicated, and as if such person had been so denounced and excommunicated according to the laws of this realm, until he or she shall conform, &c. And that every person sued by such person so disabled, may plead the same in disabling of such plaintiff, as if he or she were excommunicated by sentence in the ecclesiastical court. Except the action of such recusant do concern some hereditament or lease, which is not to be seized into the king's hands by force of some law concerning recusancy."

In the exposition hereof it hath been resolved,

3. Lev. 208.
 Latch. 176.
 Hct. 18.
 8. Mod. 43.

Stat. 2. First, That the plea of such a conviction, like all other pleas in disability, ought to be pleaded before *imparlance*, and also to conclude with a demand "if the plaintiff shall be answered."

Noy, 89.
 Latch. 176.
 2. Lev. 333.

Stat. 3. Secondly, That such plea ought also to shew before what justices the conviction was, that the Court may know where to send for a certificate thereof, if it be denied; and also that the record itself, or at least a certificate thereof, ought to be immediately produced, according to the general

peral rule of the law as to all dilatory pleas grounded upon records.

Sec. 4. Thirdly, That if, after such a plea, it be certified that the plaintiff hath conformed, and thereupon the defendant be ordered to plead in chief, and then the plaintiff relapse and be convicted again, the defendant cannot plead the same in disability a second time. Hettl. 176.

Sec. 5. Fourthly, That it must appear either from the conviction itself, or by proper averments, that the plaintiff is convicted of Popish recusancy, because no recusants, except Popish ones, are within the said clause; however, that this is sufficiently set forth by alledging that the plaintiff, being *papalis recusans*, was indicted and convicted *secundum formam statuti*, &c. 2. Lut. 1117.
3. Lev. 333,
334. 11, 12.

Sec. 6. And some have gone so far as to hold, that all Popish recusants convicted may be taken up by the writ *de excommunicato capiendo*, and that they are not to be admitted as competent witnesses in any cause; but this seems to be a construction over-severe: for inasmuch as this, like all other penal statutes, ought to be construed strictly, and the words thereof are no more than, "that such persons shall stand disabled, &c. as persons lawfully excommunicate, &c." and the purport thereof may be fully satisfied by the disability to bring any action, it seems to be too rigorous to carry them farther. 1. Bul. 155, 156.
S. P. 1. St.
Tr. 268. 3. St.
Tr. 425. Caw-
ley 216. Vide
1. Com. Dig.
13. and 4-
Com. Dig. 539.
as to the law in
general upon
this head.

Sec. 7. As to THE SECOND of the said disabilities, viz. that of presenting to a church, the same being at this day extended by 12. Ann. c. 2. to all persons making profession of the Popish religion, I shall refer the reader, for the matters relating to this head, to Chap. 15. wherein is shewn how penal it is, barely to profess the said religion; and I shall only take notice in this place, that by 1. Will. & Mary, c. 26. f. 4. "If the trustee, mortgagee, or grantee, of any avoidance whereof the trust shall be for any Popish recusant convicted, shall present without giving notice in writing of the avoidance to the university, &c. within three months after the avoidance, he forfeits five hundred pounds." Trustees of a
Popish recu-
sant convicted
are disabled
from present-
ing to a living
without no-
tice.
3. Burn. E. L.
256.

Sec. 8. As to THE THIRD of the said disabilities, viz. that of bearing any public office or charge, it is enacted by 3. Jac. 1. c. 5. f. 9. "That no Popish recusant convicted shall exercise any public office or charge in the common-wealth, but shall be utterly disabled to exercise the same by himself or his deputy." Popish recu-
sants disabled
to bear any
public office.
16. Geo. 2. c.
30. f. 3.
20. Geo. 2. c.
52. f. 56.

Sec. 9. It is observable, that this clause is more strongly penned than that which immediately precedes it, relating to all recusants in general, as to the following particulars: 1. That this extends to all public offices and charges in general, whereas the former extends only to those which are particularly enumerated. 2. That this expressly disables a Popish recusant to exercise such an office by himself or his deputy, but the other says nothing at all of the exercise of an office by a deputy.

But Roman Catholics taking the oaths and declaration before-mentioned may act as counsellors, barristers, attornies, &c.

Vide ante p. 47.

† PAPISTS were also disabled by the statutes 7. & 8. Will. 3. c. 24. and 1. Geo. 1. c. 23. from practising in any manner in courts of justice as counsellors, barristers, attornies, solicitors, clerks, or notaries, without having taken the oaths and declaration. But it is now enacted by 31. Geo. 3. c. 32. s. 22. "That the oaths and declaration in and by the said last-mentioned acts respectively mentioned and appointed to be taken and subscribed by persons acting as a counsellor at law, barrister, attorney, solicitor, clerk, or notary, as in the said acts respectively is mentioned, shall be no longer put or administered to, or required to be taken by, any person professing the Roman Catholick religion, as a qualification or requisite to enable him to act in the capacities aforesaid, or any of them, but the oath of allegiance, abjuration, and declaration, herein-before appointed to be taken and subscribed, shall be administered, taken, and subscribed to and by persons professing the Roman Catholick religion, and acting or requiring to act in the capacities aforesaid, or any of them, in the stead and place of the said oaths and declaration, and every of them; and in order thereto the oath of allegiance, abjuration, and declaration, herein-before appointed to be taken and subscribed, may and shall be administered, taken, and subscribed in the same courts, and may and shall be registered in the same manner, as the oaths and declaration in the room of which it is hereby substituted, are by the acts so prescribing the same oaths and declaration respectively as aforesaid appointed to be administered, taken, subscribed, and registered, and when so taken, subscribed, and registered, shall, for the purpose of enabling persons professing the Roman Catholick religion to act in the capacities aforesaid, or any of them, have the same effect and operation, in all intents, constructions, and purposes whatsoever, as the oaths and declaration in the room of which it is hereby substituted."

† By 31. Geo. 3. c. 32. f. 7. it is also enacted, “ That if any person professing the Roman Catholick religion shall hereafter be chosen or otherwise appointed to bear the office of HIGH CONSTABLE, or petty constable, churchwarden, overseer of the poor, or any other parochial or ward office, and such person shall scruple to take upon him any of the said offices, in regard of the oaths or any other matter or thing required by the law to be taken or done in respect of such office, every such person shall and may execute such office or employment by a sufficient deputy by him to be provided, that shall comply with the laws in this behalf; but the said deputy shall be allowed and approved by such person or persons, in such manner as such officer or officers respectively should by law have been allowed and approved.”

Roman Catholics may execute the office of constable, &c. by deputy.

SECT. 10. As to THE FOURTH of the said disabilities, viz. that of claiming any part of a husband's personal estate, it is enacted by 3. Jac. 1. c. 5. f. 10. “ That every woman, being a Popish recusant convict (her husband not standing convicted of Popish recusancy), which shall not conform herself and remain conformed, but shall forbear to repair to some church or usual place of common prayer, and there hear divine service and sermon; if any then be, and receive the sacrament of the Lord's Supper, according to the laws of this realm, by the space of one whole year next before the death of her said husband, shall not only be disabled to be executrix or administratrix of her said husband, but also to have or demand any part of her said husband's goods or chattels, by any law, custom, or usage whatsoever.” And by 3. Jac. 1. c. 5. f. 13. “ Every woman is put under the like disability, being a Popish recusant, who shall be married otherwise than according to the Church of England.”

Female Popish recusant convict, who shall not conform within twelve months before the death of her husband, disabled to have any part of his effects.

See also 7. J. 1. ch. 6.

SECT. 11. As to THE FIFTH of the said disabilities, viz. that of claiming an estate by the courtesy, or by way of dower, &c. it is enacted by 3. Jac. 1. c. 5. f. 13. “ That every man who, being a Popish recusant convict, shall be married otherwise than in some open church or chapel, and otherwise than according to the orders of the Church of England, by a minister lawfully authorized, shall be disabled to have any estate, as tenant by the courtesy; and that every woman, being a Popish recusant convict, who shall be married in other form than as aforesaid, shall be disabled to claim her dower, or jointure, or widow's estate, &c.”

Popish recusants convicts married other than according to the rites of the Church, disabled to hold any estate by courtesy or by dower.

Vide post. p. 62. f. 1. and the Marriage Act 26. Geo. 2. c. 33.

Popish recusant c. nviets restrained from removing above five miles from home.

3. Burn. E. L. 162. 165.

See Cawl. 128, 129, &c. 207, 208.

SECT. 12. AS TO THE FIRST of the above mentioned restraints, viz. that from going above five miles from home, &c. it is enacted by 35. Eliz. c. 2. and 3. Jac. 1. c. 5. f. 6, 7. "That every Popish recusant convict shall repair to his place of dwelling, &c. and not remove above five miles from thence, unless he be urged by process, &c. or have a licence from the privy council, &c. or under the hands and seals of four justices of peace, with the assent in writing of the lieutenant of the county, or of the bishop, &c. (every licence of which kind by justices of peace must express both the particular cause and the time for which it is given, and ought not to be granted without a previous oath of some reasonable cause), under pain of forfeiting all his goods and hereditaments (whether freehold or copyhold), for his life, or of abjuring the realm, if he be not worth twenty marks a year, or forty pounds in goods, unless he recant before conviction, and also continue conformable."

C. Jac. 352. 1. Rol. 108. Moor 836.

SECT. 13. NOTE, that the privy council may grant such licence without any special cause or oath, &c. but that the justices of peace cannot. And it hath been resolved, that in pleading a licence of justices of peace, you must expressly shew that it was made under their hands and seals, and also set forth the cause in particular for which it was granted, and the time for which it was limited, and that the party was sworn to the truth of such cause, &c.

C. Jac. 352. 1. Roll. 108. Moor 836.

SECT. 14. It is said, that if the same person be both a justice of peace and a lieutenant, he cannot both join in a licence as justice of peace, and also give his assent as lieutenant, but can only act in one capacity.

Cawl. 130, 131. C. Eliz. 212.

SECT. 15. It seems that the miles shall be computed according to the English manner, allowing 5280 foot, or 1760 yards to each mile, and that the same shall be reckoned not by straight lines, as a bird or arrow may fly, but according to the nearest and most usual way.

Popish recusant convicts restrained from appearing in the presence of the king,

SECT. 16. AS TO THE SECOND of the above-mentioned restraints, viz. that which relates to the coming to court, it is enacted by 3. Jac. 1. c. 5. f. 2. "That no Popish recusant convict shall come into the court or house where the king or his heir apparent shall be, unless he be commanded so to do by the king, upon pain of one hundred pounds, &c."

on pain of being disabled, &c.

† And it is further enacted by 30. Car. 2. st. 2. f. 5, 6. "That every peer of this realm and member of the house
" of

“ of peers, and every peer of *Scotland* or *Ireland* being of
 “ the age of one and twenty years or upwards, not having
 “ taken the said oaths, and made and subscribed the decla-
 “ ration ; and every member of the house of commons not
 “ having taken the oaths and subscribed the declaration ;
 “ and every *Popish recusant convict*, who shall come advised-
 “ ly into, or remain in the presence of the king and queen,
 “ or shall come into the court or house where they or any
 “ of them reside, shall be disabled to hold or execute any
 “ office or place of trust civil or military, or to sue in law
 “ or equity, or to be an executor, &c. or capable of any
 “ legacy or deed of gift, and shall forfeit for every wilful
 “ offence five hundred pounds, unless such person do, within
 “ the term next after such his coming or remaining, take
 “ the oaths of allegiance and supremacy, and make the de-
 “ claration against transubstantiation and the invocation of
 “ saints, &c. in the court of chancery.”

† But by 31. Geo. 3. c. 32. s. 20. it is enacted, “ That no
 “ peer of *Great Britain* or *Ireland*, or member of the house
 “ of peers of *Great Britain*, or of the kingdom of *Ireland*,
 “ professing the Roman Catholick religion, who shall take
 “ and subscribe the oath of allegiance, abjuration, and de-
 “ claration, herein-before appointed to be taken and sub-
 “ scribed, shall be liable to be prosecuted for such offence
 “ in the said act 30. Car. 2. s. 2. or be liable to any of the
 “ pains, penalties, forfeitures, and disabilities, for breach
 “ of the provision in the said clause contained, or be other-
 “ wise deemed to fall within, or be affected by, any part
 “ of the said provision.”

But no Catho-
 lick peer who
 shall have
 taken the ap-
 pointed oath
 shall be liable
 to prosecution
 under the sta-
 tute 30. Car.
 2. s. 2. s. 5.

SECT. 17. As to THE THIRD of the above-mentioned re-
 straints, viz. that which relates to the keeping of arms,
 it is enacted by 3. Jac. 1. c. 5. s. 27, 28, 29. “ That all
 “ such armour, gunpowder, and munition, of whatsoever
 “ kinds, as any Popish recusant convict shall have in his
 “ own house or elsewhere, or in the possession of any other
 “ at his disposition, shall be taken from him by warrant of
 “ four justices of peace at their General or Quarter Sessions
 “ (except such necessary weapons as shall be allowed him
 “ by the said four justices for the defence of his person or
 “ house); and that the said armour, &c. so taken, shall be
 “ kept at the cost of such recusant, in such place as the
 “ said four justices at their said sessions shall appoint: and
 “ that if any such recusant having such armour, &c. or if
 “ any other person who shall have any such armour, &c.
 “ to the use of such recusant, shall refuse to discover to the
 “ said justices, or any of them, what armour he hath, or
 “ shall let or hinder the delivery thereof to any of the said

Popish recu-
 sants convict
 restrained
 from having
 any gunpow-
 der and muni-
 tion in their
 custody.

“ justices, or to any other person authorized by their warrant to take the same, that then every person so offending shall forfeit his said armour, &c. and also be imprisoned for three months without bail, by warrant from any justices of peace of such county.” And it is further enacted, “ That notwithstanding the taking away such armour, &c. yet such recusant shall be charged with the maintaining of the same, and with the providing of a horse, &c. in such sort as others of his majesty’s subjects.” Also it is further enacted by 1. Will. & Mary, c. 15. “ That no reputed Papist refusing to make the said declaration against Popery, mentioned in 30. Car. shall keep arms,” as it is set forth more at large Chap. 14. Sect. 4.

Popish recusants convicted restrained from living within ten miles of *London*, except qualified under the statute 31. Geo. 3. c. 32.

Sec. 18. As to THE FOURTH of the above-mentioned restraints, viz. that which relates to the coming within ten miles of *London*, it is enacted by 3. Jac. 1. c. 5. f. 4, 5. “ That no Popish recusant, &c. shall remain within the compass of ten miles of *London*, under pain of one hundred pounds, except such persons as, at the time of the said act, did use some trade, mystery, or manual occupation, in *London*, &c. and such as shall have their only dwelling in *London*, &c.” Also reputed Papists refusing to make the declaration mentioned in the precedent sections, are to be removed from *London*, &c. by force of 1. Will. & Mary, c. 9. which is set forth more at large in Chap. 14. Sect. 3. † But by 31. Geo. 3. c. 32. f. 19. this last-mentioned act shall not extend to any person professing the Roman Catholick religion who shall take and subscribe the oath of allegiance, abjuration, and declaration, therein appointed (a) to be taken and subscribed.

(a) See ante page 47.

Female Popish recusant convicted who shall not conform within twelve months before the death of her husband, shall forfeit two thirds of her jointure.

But see the 31. Geo. 3. c. 32. ante, page 49.

Sec. 19. As to THE FIRST of the above-mentioned forfeitures, viz. that of two parts of a jointure or dower, it is enacted by 3. Jac. 1. c. 5. f. 10. “ That every married woman, being a Popish recusant convicted (her husband not standing convicted of Popish recusancy), who shall not conform herself and remain conformed, but shall forbear to repair to some church or usual place of common prayer, and thither to hear divine service and sermon, if any then be, and receive the sacrament of the Lord’s Supper, according to the laws of this realm, within one year next before the death of her said husband, shall forfeit to the king the profits of two parts of her jointure and dower of any hereditaments of her said husband, &c.”

Seft. 20. As to THE SECOND of the above-mentioned forfeitures, *viz.* that of twenty pounds, &c. for not receiving the sacrament yearly after conformity, it is enacted by 3. Jac. 1. c. 4. f. 2, 3. " That if any Popish recusant convict, who hath conformed himself to the Church, &c. shall not receive the sacrament in his own parish church, &c. within one year after his conformity, he shall forfeit twenty pounds, and for the second year forty pounds, and for every year after sixty pounds, &c."

Popish recusant convict who shall not receive the sacrament, &c. forfeits 20l.

Seft. 21. As to THE THIRD of the above-mentioned forfeitures, *viz.* that of one hundred pounds for an unlawful marriage, it is enacted by 3. Jac. 1. c. 5. f. 13. " That every Popish recusant convict who shall be married to a woman who is no inheritrix otherwise than according to the Church of England, shall forfeit one hundred pounds."

Popish recusant married other than according to the Church of England, forfeits 100l.

Seft. 22. As to THE FOURTH of the above-mentioned forfeitures, *viz.* that of one hundred pounds for the omission of a lawful baptism, it is enacted by 3. Jac. 1. c. 5. f. 14. " That every Popish recusant who shall not cause his or her child to be baptized, within one month after its birth, by a lawful minister, &c. shall forfeit one hundred pounds, &c."

Popish recusant forfeits 100l. for unlawful baptism.

Seft. 23. As to THE FIFTH of the above-mentioned forfeitures, *viz.* that of twenty pounds for an unlawful burial, it is enacted by 3. Jac. 1. c. 5. f. 15. " That if any Popish recusant, not being excommunicate, shall be buried in any other place than in the church or church-yard, or not according to the ecclesiastical laws of this realm, the executors, &c. of such recusant, knowing the same, or the party that causeth him to be so buried, shall forfeit twenty pounds, &c."

Popish recusant forfeits 20l. for unlawful burial.

Seft. 24. As to the inconvenience to which all such offenders are liable, *viz.* that of having their houses searched for reliques, &c. it is enacted by 3. Jac. 1. c. 5. f. 26. " That any two justices of peace, and all mayors, bailiffs, and chief officers of cities and towns corporate, in their respective jurisdictions, may search the house and lodgings of every Popish recusant convict for Popish books and reliques; and that if any altar, pix, beads, pictures, or such like Popish relique, or any Popish book, be found in the custody of such person, as, in the opinion of the said justices, &c. shall be unmeet for him or her to have or use, it shall be defaced and burnt, if it be meet

Justices of the peace and magistrates may search the houses of Popish recusant convict for reliques.

" to

“ to be burnt; and if it be a *crucifix*, or other relique of
 “ any price, the same shall be defaced at the general quar-
 “ ter-sessions in the county where it shall be found, and
 “ then restored to the owner.”

If a married
 woman con-
 victed of recu-
 sancy shall not
 conform with-
 in three
 months, her
 husband shall
 pay 10l. a-
 month.

Stat. 25. As to the inconvenience to which such of-
 fenders, being *femes covert*, are liable, viz. that of being
 committed, it is enacted by 7. Jac. 1. c. 6. f. 28. “ That
 “ if any married woman, being a Popish recusant convict,
 “ shall not within three months after her conviction con-
 “ form herself, and repair to church and receive the sacra-
 “ ment, &c. she may be committed to prison by one of the
 “ privy council, or by the bishop, if she be a *baroness*, or
 “ if under that degree by two justices of peace, whereof one
 “ to be of the *quorum*, there to remain till she perform,
 “ &c. unless the husband will pay to the king ten pounds a-
 “ month for her offence, or else the third part of all his
 “ lands, &c. at the choice of the husband, &c.”

II. How far such *recusants* make others liable to be pu-
 nished.

Popish recu-
 sant convict
 may be pu-
 nished for har-
 bouring recu-
 sants, unless
 he be qualified
 under 31. Geo.
 3. c. 32.

Stat. 26. It is to be observed, that the husband of a Popish
 recusant convict is not only liable to the forfeiture of ten
 pounds a month for the absence of any of his servants from
 church, by force of 1. Jac. 1. which is set forth more at
 large in the foregoing Chapter, but is also “ utterly disabled,”
 by the ninth paragraph of the said statute, “ to exercise any
 “ publick office or charge in the commonwealth by himself
 “ or by his deputy (except such husband himself, and his
 “ children which shall be above the age of nine years abid-
 “ ing with him, and his servants in the household, shall
 “ once every month at least, not having any reasonable ex-
 “ cuse to the contrary, repair to some church or chapel
 “ usual for divine service, and there hear divine service;
 “ and the said husband, and such his children and servants
 “ as are of meet age, receive the sacrament of the Lord’s
 “ Supper at such times as are limited by the laws of this
 “ realm, and do bring up his said children in the true re-
 “ ligion”).

The house of
 a Papist may
 be searched
 for books.

Stat. 27. Also it is farther enacted by the said statute of
 3. Jac. 1. c. 5. f. 26. “ That the house of one whose wife
 “ is a Popish recusant convict, may be searched by any two
 “ justices of peace, &c. for Popish books, &c.”

But no person
 qualified un-
 der 31. Geo. 3.
 c. 12 shall be

+ *Stat. 28.* But now it is enacted by the 31. Geo. 3. c. 32.
 “ That no person professing the Roman Catholick religion,
 “ who shall take and subscribe the oath before-mentioned,
 “ shall

“ shall be convicted or prosecuted upon any of the statutes
 “ for keeping or having any servant, or other person, being
 “ a Papist, or reputed Papist, or person professing the Po-
 “ pish religion, who shall not so resort or repair to his or
 “ his parish church or chapel, or some such other usual place
 “ of common prayer.”

liable for har-
 bouring Ro-
 man Catho-
 licks;

† *Stat.* 29. And by the said statute 31. Geo. 3. c. 32. f. 4.
 “ No person who shall take and subscribe the oath therein
 “ appointed to be taken and subscribed, shall be presented,
 “ indicted, sued, impeached, prosecuted, or convicted, in
 “ any civil or ecclesiastical court of this realm, for being
 “ A PAPIST, or a reputed PAPIST.

or be profe-
 cuted on any of
 the foregoing
 statutes for be-
 ing a Papist, or
 reputed Papist;

† *Stat.* 30. And by the said statute 31. Geo. 3. c. 32. f. 3.
 “ No person professing the Roman Catholick religion who
 “ shall take and subscribe the said oath, as before-men-
 “ tioned (a), shall be convicted or prosecuted upon, or
 “ liable to be prosecuted upon, any of the before-men-
 “ tioned statutes (b), or upon any other statute, by indict-
 “ ment, information, action of debt, or otherwise, or in
 “ any ecclesiastical court, for not resorting to his or her
 “ parish church, or some other usual place of common
 “ prayer, to hear divine service according to the rites of
 “ THE CHURCH OF ENGLAND.”

or for not re-
 sorting to
 church to hear
 service accord-
 ing to the Li-
 turgy of the
 Church of
 England.

(a) Ante, p.

46.

(b) Ante, p.

49.

CHAPTER THE THIRTEENTH.

OF SAYING OR HEARING MASS.

No person
shall say MASS.

Dyer 203.

4. Comm. 56.
87. 115.

3. Jac. 1. ch. 5.

2. Show. 216.

AS to the offence of saying or hearing mass, it is enacted by 23. Eliz. c. 1. f. 4. "That every person who shall say or sing mass, being thereof lawfully convict, shall forfeit two hundred marks, and be committed to prison in the next gaol, there to remain by the space of one year, and from thenceforth till he have paid the said sum of two hundred marks; and that every person who shall willingly hear mass, shall forfeit the sum of one hundred marks, and suffer a year's imprisonment."

Except in the
house of a fo-
reign minister;

Sec. 2. And it is enacted by 11. & 12. Will. 3. c. 4. f. 2, 3, 4, 5. "That every person who shall apprehend any Popish bishop, priest, or jesuit, and prosecute him to conviction for saying mass, or exercising any other part of the function of a Popish bishop or priest, shall receive one hundred pounds of the sheriff; and that every such Popish bishop, &c. (except, being a foreigner, he be entered in the secretary's office, and officiate only in the house of a foreign minister) shall be adjudged to perpetual imprisonment."

or except
such person
shall have
taken the oath
required by
18. Geo. 3. c.
65.

† Sec. 3. But by 18. Geo. 3. c. 60. it is enacted, "That the abovementioned clauses of 11. & 12. Will. 3. are repealed," provided, by f. 5. "that such Popish bishop, priest, jesuit, or schoolmaster, shall have taken and subscribed the oath, (in the words as recited in the said statute of Geo. 3.) before he shall have been apprehended, or any prosecution commenced against him."

And no person
who shall have
taken the oath
appointed by
31. Geo. 3. c.
32. shall be
prosecuted on
the above sta-
tutes for either
bearing or say-
ing MASS.

† Sec. 4. And by 31. Geo. 3. c. 32. f. 4. it is enacted, "That no person who shall take and subscribe the oath herein-before appointed to be taken and subscribed in manner hereby required, shall be presented, indicted, sued, impeached, prosecuted, or convicted, in any civil or ecclesiastical court of this realm, for being a Papist, or reputed Papist, or for professing or being educated in the Popish religion, or for hearing or saying mass, or for being a priest or deacon, or entering or belonging to any ecclesiastical order or community of the Church of Rome, or for being present at, or performing or observing any rite, ceremony, practice, or observance of the
" Popish

“ Popish religion, or maintaining or assisting others
“ therein.

† *Sec. 5.* By 31. Geo. 3. c. 32. f. 5. “ Provided always, But no assembly for religious worship shall be allowed under this act till it shall be certified to the quarter sessions, &c.
“ that no place of congregation, or assembly for religious
“ worship, shall be permitted or allowed by this act, until
“ the place of such meeting shall be certified to the justices
“ of the peace, at the general or quarter sessions of the
“ peace for the county, city, or place in which such meeting
“ shall be held, and until the place of such meeting
“ shall be recorded at the said general or quarter sessions;
“ the clerk of the peace whereof is hereby required to record
“ the same, and to give a certificate thereof to such
“ person as shall demand the same, for which there shall
“ be no greater fee or reward taken than the sum of sixpence;
“ and that no person in holy orders, or pretended
“ holy orders, whether as priest, or as a minister of any
“ other higher rank or order, shall perform any ecclesiastical
“ function, or otherwise officiate in any such place
“ of meeting, until his name, and his description, as a
“ priest or minister, shall have been recorded at the quarter
“ or other general session of the peace for the county, or
“ other division, or place, in which such place of meeting
“ shall be situate, by the clerk of the peace of the said court;
“ who is hereby required to record such name and description
“ accordingly, upon demand by such person, and upon
“ payment of sixpence as a fee or reward, and shall give a
“ certificate thereof to such person as shall from time to
“ time demand the same, for which certificate no greater
“ fee or reward shall be taken than two shillings; and no
“ priest or minister of any rank, in holy orders, or pretended
“ holy orders, who shall officiate in any such place of meeting,
“ not so recorded as aforesaid, shall be deemed to be
“ within the benefit of this act, for any purpose whatsoever.

nor shall any person perform any ecclesiastical function therein until his name, &c. be recorded by the clerk of the peace.

† *Sec. 6.* By 31. Geo. 3. c. 32. f. 6. “ Provided, that if No such place of assembly to be locked during the meeting.
“ any assembly of persons professing the Roman Catholick
“ religion shall be had in any place for religious worship
“ with the doors locked, barred, or bolted during any
“ time of such meeting together, all and every person and
“ persons who shall come to or be at such meeting, shall
“ not receive any benefit from this law; but, notwithstanding
“ having taken the aforesaid oath of allegiance,
“ abjuration, and declaration, shall, from the time of conviction,
“ be liable to the same pains and penalties for
“ such their meeting, as if this act had not been made.”

† *Sec. 7.* By 31. Geo. 3. c. 32. f. 9. “ Provided always, Laws for frequenting of divine service
“ that all the laws made and provided for the frequenting of
“ divine

to continue in force. “ divine service on the Lord’s day, commonly called *Sunday*, shall be still in force, and executed against all persons who shall offend against the said laws, unless such persons shall come to some congregation or assembly of religious worship permitted by this act, or the toleration act.”

Penalty on persons disturbing congregations, or misusing priests. † *Sect. 8.* By 31. Geo. 3. c. 32. s. 10. it is further enacted, “ That if any person or persons do and shall, willingly and of purpose, maliciously or contemptuously come into any place of congregation, or assembly of religious worship, permitted by this act, and disquiet or disturb the same, or misuse any priest, minister, preacher, or teacher therein, such person or persons, upon proof thereof before any justice of the peace, by two or more sufficient witnesses, shall find two sureties of the peace, to be bound, by recognizance, in the penal sum of fifty pounds, and, in default of such sureties, shall be committed to prison, there to remain till the next general or quarter session; and, upon conviction of the said offence at the said general or quarter sessions, shall suffer the pain and penalty of twenty pounds, to the use of the king’s majesty, his heirs and successors.”

The act not to extend to Roman Catholick ecclesiasticks in certain cases; † *Sect. 9.* By 31. Geo. 3. c. 32. s. 11. “ Provided always, that no benefit in this act contained shall extend, or be construed to extend, to any Roman Catholick ecclesiastick permitted by this act, who shall officiate in any place of congregation or assembly for religious worship permitted by this act with a *steeple* and *bell*, or at any funeral in any church or church-yard, or who shall exercise any of the rites or ceremonies of his religion, or wear the habits of his order, save within some place of congregation or assembly for religious worship permitted by this act, or in a private house, where there shall not be more than *five persons* assembled, besides those of the household, or who shall not previously to his so officiating or exercising his functions as aforesaid have taken and subscribed the oath of allegiance, abjuration, and declaration hereby appointed to be taken as aforesaid.”

nor to exempt Roman Catholicks from paying tithes, &c. † *Sect. 10.* By 31. Geo. 3. c. 32. s. 12. PROVIDED ALSO, “ That nothing herein contained shall be construed to exempt any such person professing the Roman Catholick religion from paying tithes or other parochial duties, or any other duties to the church or minister, or from any prosecution in any ecclesiastical court, or elsewhere, for the same; or to repeal any part of THE MARRIAGE ACT, or any parts of any other statutes concerning marriages;”

nor to repeal any part of 16. Geo. 2. cap. 33. &c.

“ riages ; or to give any ease, benefit, or advantage to any
 “ person who shall, by preaching, teaching, or writing,
 “ deny or gainsay the oath of allegiance, abjuration, and
 “ declaration, herein-before mentioned and appointed to
 “ be taken as aforesaid, or the declarations or doctrines
 “ therein contained, or any of them ; or to repeal or affect
 “ any law now in force concerning the right or succession
 “ to, or the limitation of the crown.”

† *Stat. 11.* By 31. Geo. 3. c. 32. s. 8. “ Every priest, or
 “ other person in holy orders, or pretended holy orders,
 “ being a minister, teacher, or preacher of any congrega-
 “ tion of persons professing the Roman Catholick reli-
 “ gion, who shall take and subscribe the aforesaid oath of
 “ allegiance, abjuration, and declaration, in manner herein-
 “ before prescribed, shall from thenceforth be exempted
 “ from serving upon any jury, or from being chosen or
 “ appointed to bear the office of churchwarden, overseer of
 “ the poor, or any other parochial or ward office, or other
 “ office, in any hundred of any shire, city, town, parish,
 “ division, or wapentake.”

Ministers of
 any Roman
 Catholick
 congregation
 who shall take
 the aforesaid
 oath, exempt-
 ed from serv-
 ing on juries,
 &c.

CHAPTER THE FOURTEENTH.

OF NOT MAKING A DECLARATION AGAINST POPERY.

THE offence of refusing to make a declaration against some of the principal doctrines of the Popish religion puts all persons under the following restraints: FIRST, From sitting in parliament. SECONDLY, From holding a place at court. THIRDLY, From living within ten miles of London. FOURTHLY, From keeping arms. FIFTHLY, It puts them under a disability of presenting to a church.

Roman Catholics restrained from sitting in the house of peers or in the house of commons.

Sec't. 1. As to THE FIRST of the above-mentioned restraints, viz. that which relates to the sitting in parliament, it is enacted by 30. Car. 2. st. 2. c. 1. "That no peer shall vote or make his proxy in the house of peers, or sit there during any debate; and that no member of the house of commons shall vote or sit there during any debate after the speaker is chosen, until such peer or member shall take the oaths of allegiance and supremacy, and make a declaration of his belief that there is no transubstantiation in the sacrament of the Lord's Supper; and that the invocation or adoration of the Virgin Mary, or any other saint, and the sacrifice of the mass, as they are now used in the Church of Rome, are superstitious and idolatrous, &c. on pain that every such offender shall be adjudged a Popish recusant convict, and disabled to hold or execute any office, &c. or from thenceforth to sit or vote in either house of parliament, to sue in law or equity, or to be guardian, executor, or administrator, or capable of any legacy or deed of gift, and shall forfeit for every wilful offence five hundred pounds."

1. Geo. 1. c. 13.

Roman Catholics restrained from holding a place at court.

Sec't. 2. As to THE SECOND of the above-mentioned restraints, viz. that which relates to the holding a place at court, it was enacted by the 30. Car. 2. st. 2. s. 9. 12, 13. "That every sworn servant to the king shall take the said oaths, and make the declaration in chancery, the next Term after he shall be so sworn a servant, &c. and that if any such person neglecting so to do, should advisedly come into or remain in the presence of the king or queen, or come into the court or house where they or any of them reside, he shall suffer all the penalties expressed in the foregoing section, unless such person so coming into the

" the king's preſence, ſhall firſt have licence ſo to do." But this clauſe of the ſtatute is repealed by 2. Geo. 2. c. 31. ſ. 9.

ſect. 3. As to THE THIRD of the above-mentioned reſtraints, *viz.* that which relates to the living within ten miles of London, it is enacted by 1. Will. and Mary, c. 9. " That every juſtice of peace in *London* and *Weſtminſter*, and within ten miles thereof, ſhall cauſe to be arreſted and brought before him all reputed PAPISTS (except foreigners, being merchants, or menial ſervants to ſome ambafador or public agent, and except all ſuch as uſed ſome trade, myſtery, or ſome manual occupation at the time of the ſaid act in *London*, &c. and alſo except all ſuch perſons as had their dwelling in *London*, &c. within fix months before the thirteenth of February 1688, and no dwelling elſewhere, and certified their names to the ſeſſions before the firſt of Auguſt 1689), and that every ſuch juſtice ſhall tender the ſaid declaration to every ſuch perſon, and that every ſuch perſon reſuſing the ſame, and afterwards remaining in *London*, &c. or within ten miles thereof, or being certified to the king's bench or quarter ſeſſions, at the next Term or ſeſſions, as having reſuſed to make the ſaid declaration, and neglecting to make the ſame in ſuch court, ſhall ſuffer as a Popiſh reſuſant convict, &c."—But by 31. Geo. 3. c. 32. ſ. 19. it is enacted, " ſhall not extend or be deemed, taken, or conſtrued to extend to any perſon profeſſing the Roman Catholic religion, who ſhall take and ſubſcribe the oath of allegiance, abjuration, and declaration therein appointed to be taken and ſubſcribed."

Reputed Catholics who ſhall reſuſe to take the oaths, and remain in *London* or within ten miles thereof, ſhall ſuffer as Popiſh reſuſants convict, unleſs qualified as the ſtatute 31. Geo. 3. c. 32. directs.

See ch. 22. ſ. 18.

Vide ante 47.

ſect. 4. As to THE FOURTH of the above-mentioned reſtraints, *viz.* that which relates to the keeping arms, it is enacted by 1. Will. and Mary, c. 15. " That any two juſtices of the peace may and ought to tender the ſaid declaration to any perſon whom they ſhall know or ſuſpect, or have information of, as being a Papiſt, or ſuſpected to be ſuch; and that no ſuch perſon ſo required, and not making and ſubſcribing the ſaid declaration, or not appearing before the ſaid juſtices upon notice to him given, or left at his uſual abode, by one authorized by warrant under the hands and ſeals of the ſaid juſtices, ſhall keep any arms or ammunition, or horſe above the value of five pounds, in his own poſſeſſion, or in the poſſeſſion of any other perſon to his uſe (other than ſuch neceſſary weapons as ſhall be allowed him by the quarter ſeſſions for the defence of his houſe or perſon), and that any two juſtices of peace, by warrant under their hands and ſeals, may authorize any perſon in the day-time, with

No perſon ſuſpected of being a Catholic who, on tender by two juſtices, ſhall reſuſe to take the oaths, &c. ſhall keep any arms or ammunition. But no perſon ſhall be proſecuted for not obeying ſuch ſummons.

See ch. 12. ſ. 17.

“ the assistance of the constable or his deputy, or the tithing-man, to search for all such arms, &c. and horses; and seize them to the king’s use; and that the said justices shall deliver the said arms and ammunition at the next quarter sessions in open court; and that whoever shall conceal, &c. or shall be aiding to the concealing any such arms or horses, shall be committed to the common gaol, by warrant under the hands and seals of any two justices of peace, and also forfeit treble the value; and that those who discover any such arms or ammunition, so as the same may be seized, shall have the full value thereof, to be awarded to them by the sessions, &c. and that such refusers of the said declaration, &c. shall be discharged whenever they shall make the same.”—But by 31. Geo. 3. c. 32. s. 18. “ No person shall be summoned to make the declaration, or be prosecuted for not obeying such summons.”

Papists are disabled from presenting to a church.

Sec. 5. FIFTHLY. As to the above-mentioned disability of presenting to a church, it is enacted by 1. Will. and Mary, c. 26. “ That whoever shall refuse to make the said declaration upon such a tender thereof as is prescribed by the said act, shall be disabled to present to any benefice, &c.” But it seems needless to set forth the clause of the said statute relating to this matter at large in this place, inasmuch as, By 4. Geo. 3. by 12. Ann. c. 14. “ All persons whatsoever making profession of the Popish religion, are under the like disability,” as will appear from ch. 15. sect. 6, 7, &c. Papiſts are made liable to pay double land-tax, if they do not conform in the manner directed by the act.

CHAPTER THE FIFTEENTH.

OF PROMOTING THE POPISH RELIGION.

OFFENCES in promoting or encouraging the Popish religion seem to be reducible to the following heads: 1. Comm. 451. 4. Comm. 55. 115.
FIRST, Giving or receiving Popish education: **SECONDLY**, Professing the Popish religion: **THIRDLY**, Buying or selling Popish books.

I. Giving or receiving Popish education.

Stat. 1. This depends upon several statutes. And first it is enacted by 1. Jac. 1. c. 4. s. 6, 7. "That if any person or persons under the king's obedience shall go or send, or cause to be sent, any child, or any other person under their or any of their government, beyond the seas, out of the king's obedience, to the intent to enter into, or reside in, or repair to any college, &c. of any Popish order, profession, or calling, to be instructed, persuaded or strengthened in the Popish religion, or in any sort to profess the same, every such person so sending such child, &c. shall forfeit 100l and every such person, so passing or being sent, &c. shall in respect of him or herself only, and not in respect of any of his heirs or posterity, be disabled to inherit, purchase, take, have or enjoy, any profits, hereditaments, chattels, debts, legacies, or sums of money, &c. whatsoever: and that all estates, terms, and other interests whatsoever to be made, suffered, or done, to the use or behoof of any such person, or upon any trust or confidence, mediately or immediately, to or for the benefit or relief of any such person, shall be utterly void."

Persons educating Protestant children or sending them abroad to be educated in the Catholic faith shall forfeit 100l and be disabled, &c.
 Andr. 104
 Lucas 113.
 356. 406.
 10. Mod. 113.
 Str. 318.
 Comyns 207.

Stat. 2. And it is farther enacted by 3. Jac. 1. c. 5. s. 16. "That if the children of any subject within the realm (the said children not being soldiers, mariners, merchants, or their apprentices or factors) shall be sent or go beyond sea, to prevent their good education in England, or for any other cause, without the licence of the king or six of his privy council (whereof the principal secretary to be one) under their hands and seals, that then every such child shall take no benefit by any gift, conveyance, descent, devise, or otherwise, of or to any hereditament or chattel, till such child, being of the age of eighteen years or above, take the oath of obedience before some justice of peace of the county, liberty, or limit, where the parent of such child

The children of English subjects who shall go, or be sent abroad without licence, shall be disabled until, being 18 years of age, they take the oaths, &c.
 Keb. 263.
 Vide 3. Bac.
 Abr. 789. and the cases, &c.
 there cited.

Vide 11. & 12.
Will. 3. c. 4.
18. Geo. 3. ch.
60.

“ child did and shall inhabit; and that in the mean time the
“ next of kin to such child, who shall be no Popish recusant,
“ shall have the said hereditaments, &c. so given, &c. until
“ such child shall conform, &c. and take the said oath, and
“ receive the sacrament: and that after such conformity, &c.
“ he who hath received the profits of the said hereditaments,
“ &c. shall account for the same, and in reasonable time
“ make payment thereof, and restore the value of the said
“ goods, &c. And that whoever shall send such child over
“ seas, shall forfeit one hundred pounds.”

Persons who
shall go them-
selves, or send
others abroad,
to be trained
up in any nun-
nery or Popish
seminary, shall
be disabled,
and forfeit
their estates
real and per-
sonal;

Sec. 3. Also it is enacted by 3. Car. 1. c. 2. “ That if
“ any person under the obedience of the king shall go, or
“ shall convey or send, or cause to be sent or conveyed, any
“ person out of the king’s dominions, into any parts beyond
“ the seas, out of the king’s obedience, to the intent to
“ enter into, or be resident or trained up in, any priory,
“ abbey, nunnery, Popish university, college, or school, or
“ house of Jesuits, priests, or in a private Popish family,
“ and shall be there by any Popish person instructed, per-
“ suaded, or strengthened in the Popish religion in any
“ sort to profess the same; or shall convey or send, or
“ cause to be conveyed or sent, any thing towards the
“ maintenance of any person so going or sent, and trained
“ and instructed, as is aforesaid, or under the colour of any
“ charity towards the relief of any priory, &c. or religious
“ house whatsoever; every person so sending, &c. any such
“ person or thing, and every person passing or sent, being
“ thereof convicted, &c. shall be disabled to prosecute any
“ suit in law or equity, or to be executor or administrator to
“ any person, be capable of any legacy or deed of gift, or to
“ bear any office within the realm; and shall forfeit all his
“ goods and chattels, with all his hereditaments, offices,
“ and estates of freehold, during his life.”

unless such
person shall
be qualified as
the 31. Geo. 3.
c. 32. directs.

But by the 31. Geo. 3. c. 32. s. 4. “ No person who
“ shall take and subscribe the oath beforementioned shall
“ be presented, indicted, sued, impeached, prosecuted or con-
“ victed for being a papist, or reputed papist, or for pro-
“ fessing or being educated in the Popish religion, or for en-
“ tering into, or belonging to any ecclesiastical order or
“ community of the Church of Rome, or for maintaining
“ or assisting others therein.”

II. Professing the Popish religion is punished with the
following disabilities: FIRST, Of taking an estate in lands:
SECONDLY, Of presenting to a church.—And with the
following restraints: FIRST, From keeping school:
SECONDLY,

SECONDLY, From withholding a competent maintenance from a Protestant child.

Sec. 4. As to THE FIRST of the abovementioned disabilities, viz. that of taking an estate in lands, it is enacted by 11. & 12. W. 3. c. 4. "That every person educated in or professing the Popish religion who shall not, within six months after the age of eighteen years, take the oath of allegiance and supremacy, and subscribe the declaration against popery mentioned in 30. Car. 2. stat. 2. chap. 1. in the chancery, or king's bench, or quarter sessions of the county where such person shall reside, shall in respect of himself or herself only, and not in respect of any of his or her heirs or posterity, be disabled to inherit or take by descent, devise, or limitation, in possession, reversion, or remainder, any lands, tenements, or hereditaments, in England or Wales, &c. And during the life of such person, and until he take the said oaths, &c. his next of kin, being a Protestant, shall enjoy the same, without being accountable for the profits, but shall not do wilful waste under pain of forfeiting treble damages to the party so disabled: and all Papists, or persons making profession of the Popish religion, are disabled to purchase in their own names, or the names of others, to their use or in trust for them: and all estates, terms, and other interest and profits whatsoever, out of lands made to their use, or on any trust, mediately or immediately, for their benefit, are void."

No person professing the *Roman Catholic religion* shall take any estate in lands, by descent, devise, &c.
Sed vide infra.

1. Atk. 526.
537.
2. Atk. 65.
154. 210.
3. Atk. 155.
457.
8. Mod. 167.
2. P. Will. 5.
155. 364.
10. Mod. 89.
230.
Strange 1096.
1. P. Will. 353.
Cowp. 468.
1. Will. 176.

Sec. 5. In the construction hereof it was resolved by the House of Lords, in *Roper's case*, That the devise of the residue of money arising from the sale of an estate appointed to be sold for payment of debts, &c. is within the statute.

very to himself in fee in order to make a marriage settlement, is not a purchaser within the act. Str. 267.

9. Mod. 172.
181.—But a Papist tenant in tail who suffers a reco-

† But by 18. Geo. 3. c. 60. the above clause in the statute of William the Third is repealed, and all persons having or claiming any lands, tenements or hereditaments, under titles not hitherto litigated, shall enjoy the same as if the said act of 11. and 12. Will. 3. c. 4. had not been made, provided always, that all such persons, within the space of six calendar months after the passing of this act, or of the accruing of his her or their title, being of the age of twenty-one years; or within six months after he or she shall attain the age of 21 years, or being of unsound mind, or in prison, or beyond the seas, then within six months after such disability removed, shall take and subscribe the oath in the words as recited in the statute."—Which oath the courts of record and chancery at Westminster, in Wales,

Except the persons so professing the *Catholic religion* shall qualify under the 18. Geo. 3. c. 60.

4. Burn 23.

Chester, Lancaster, Durham, or any general or quarter sessions of the peace, of any county or place in England are required to administer and to register.

Papists cannot present to a church.

Stat. 6. As to THE SECOND of the abovementioned disabilities, viz. that of presenting to a church; by 3. Jac. 1. 5. f. 18, 19, 20, 21. and 1. Will. and Mar. c. 26. this disability extended only to Popish recusants convicted, and persons refusing to make the declaration against Popery mentioned in 30. Car. 2. ft. 2.

Mortgagees or trustees of Papists disabled from presenting to a church;

But it is enacted by 12. Ann. ft. 2. c. 14. "That every Papist, or person making profession of the Popish religion, &c. and every mortgagee, trustee, or person any ways intrusted by or for such Papist, &c. with or without writing, shall be disabled to present to any benefice, school, or hospital, &c. or to grant any avoidance of any benefice, prebend, or ecclesiastical living; and that in all cases the universities shall present."

and the ordinary may examine the person presenting to discover secret trusts.

Stat. 7. Also by force of the said statute, "The ordinary may tender the declaration against transubstantiation to any reputed Priest making a presentation, and upon a refusal to take the same, the presentation shall be void: also the ordinary may examine every presentee upon oath, whether the person who presented him be the true patron, or only a trustee? And the court wherein a *quære impedit* shall be brought, may in like manner examine the parties, and a bill may be brought in any court of equity to discover such secret trusts, &c. and the answer of such persons upon any such examination or bill shall be good evidence against such patron in respect of such a presentation, but not as to any other purpose."

Precedent of a title made under these statutes.

Lut. 1101.

1117. Comyns 182. Gibson 771. 3. Lev. 332.

And every grant of any advowson by any papist shall be void.

1. Geo. 1. ft. 2. ch. 55.

3. Geo. 1. ch. 18.

† And it is also enacted by 11. Geo. 2. c. 17. f. 5. "That every grant of any advowson, or right of presentation, collation, nomination, or donation of and to any benefice, prebend, or ecclesiastical living, school, hospital, or donative, and every grant or any avoidance thereof by any Papist, or person making profession of the Popish religion, or any mortgagee, trustee, or person any ways intrusted directly or indirectly, mediately or immediately, by or for any such Papist, whether declared by writing or not, shall be null and void, unless such grant shall be made *bona fide*, and for a full and valuable consideration to and for, and merely and only for the benefit of a Protestant purchaser, and every such grantee shall be deemed a trustee, &c. and compelled to discover, &c. according to 12. Anne.—And that every devise thereof, "with

“ with intent to secure the benefit to the heirs or family
 “ of such Papist, shall be null and void, and the devisee
 “ bound to discover as aforesaid.”

Sec^t. 8. I do not know that any resolution hath been given on either of the abovementioned statutes of 1. Will. and Mary, c. 26, or 12. Ann. c. 14. However, the expositions which were made on 3. Jac. 1. seeming to be for the most part applicable to these latter statutes also, I shall take notice of the principal of them; as

Sec^t. 9. *First*, That where a presentment is *pro hac vice* 11. Co. 57, 58.
 vested in THE UNIVERSITY by reason of the patron's being a Comyns 182.
Popish recusant at the time when the church became void, it shall not be divested again by his conforming himself to the church, or by his death.

Sec^t. 10. *Secondly*, That such a patron is only disabled Cawley 230.
 to present, and that he continues patron as to all other purposes, and therefore that he shall confirm the leases of the incumbent, &c.

Sec^t. 11. *Thirdly*, That such a person, by being disabled 1. Jones 19.
 to grant an avoidance, is no way hindered from granting the advowson itself in fee, or for life or years, *bona fide*, and for good consideration.

Sec^t. 12. *Fourthly*, That if an advowson or avoidance be- 1. Jones 20.
 longing to such a person come into the king's hands, by Hob. 126, 127.
 reason of an outlawry, or conviction of recusancy, &c. the Moor 872.
 king, and not the university, shall present.

Sec^t. 13. As to THE FIRST of the abovementioned re- Papists con-
 straints, *viz.* that which relates to the keeping school, it is victed of keep-
 enacted by the said statute of 11. & 12. Will. 3. c. 4. f. 3. *ing school* shall
 “ That if any Papist, or person making profession of the suffer perpe-
 “ Popish religion, shall be convicted of keeping school, or tual imprison-
 “ taking upon themselves the education or government, or ment,
 “ boarding of youth, in any place within this realm, or the
 “ dominions thereunto belonging, they shall be adjudged
 “ to perpetual imprisonment.”

† *Sec^t. 14.* But this clause is repealed by 18. Geo. 3. c. 60. unless quali-
 provided the party shall take and subscribe the oath therein fied under 18.
 recited, before he shall have been apprehended, or any prose- Geo. 3. c. 60.
 cution commenced against him.

Or under the
31. Geo. 3. c.
32.

† *Sec. 15.* And by 31. Geo. 3. c. 32. f. 13. it is further enacted, "That no ecclesiastick, or other person professing the Roman Catholick religion, who shall take and subscribe the oath of *allegiance, abjuration, and declaration*, therein mentioned, shall be prosecuted in any court whatsoever, for teaching and instructing youth as a tutor or schoolmaster, any law or statute to the contrary notwithstanding."

But no Roman
Catholick shall
hold the master-
ship of any
college or
school of royal
foundation,
&c.

† *Sec. 16.* By 31. Geo. 3. c. 32. f. 14. "PROVIDED ALWAYS, "That no person professing the Roman Catholick religion shall obtain or hold the mastership of any college or school of royal foundation, or of any other endowed college or school for the education of youth, or shall keep a school in either of the Universities of OXFORD and CAMBRIDGE."

or educate any
child of a Pro-
testant father;

† *Sec. 17.* By 31. Geo. 3. c. 32. f. 15. "PROVIDED ALSO, "That no school-master professing the Roman Catholick religion shall receive into his school, for education, the child of any Protestant father."

nor keep a
school until
his name, &c.
shall have been
recorded by
the clerk of
the peace;

† *Sec. 18.* By 31. Geo. 3. c. 32. f. 16. "PROVIDED ALSO, "That no person professing the Roman Catholick religion shall be permitted to keep a school for the education of youth, until his or her name and description as a Roman Catholick school-master or school-mistress shall have been recorded at the quarter or general sessions of the peace for the county or other division or place where such school shall be situated, by the clerk of the peace of the said court, who is hereby required to record such name and description accordingly, upon demand by such person, and to give a certificate thereof to such person as shall at any time demand the same; and no person offending in the premises shall receive any benefit of this act."

and no religi-
ous order, &c.
to be founded
by Roman Ca-
tholicks, &c.

† *Sec. 19.* By 31. Geo. 3. c. 32. f. 17. "PROVIDED ALSO, "That nothing in this act contained shall make it lawful to found, endow, or establish any religious orders or society of persons bound by monastick or religious vows, or to found, endow, or establish any school, academy, or college, by persons professing the Roman Catholick religion, within these realms, or the dominions thereunto belonging; and that all uses, trusts, and dispositions, whether of real or personal property, deemed to be superstitious or unlawful, shall continue to be so deemed and taken."

Sett. 20. AS TO THE SECOND of the abovementioned restraints, *viz.* that which relates to the power of a Popish parent over his Protestant child, it is enacted by the said statute of 11. & 12. Will. 3. c. 4. "That if any Popish parent, in order to compel a Protestant child to a change of religion, shall refuse to allow such child a sufficient maintenance, suitable to the degree and ability of such parent, and to the age and education of such child, the lord chancellor upon complaint may make such order therein as shall be agreeable to the intent of the said act."

The chancellor may order provision for the Protestant child of a Popish parent.

III. Selling or buying Popish books.

Sett. 21. This depends upon 3. Jac. 1. c. 5. f. 25. by which it is enacted, "That no person shall bring from beyond the seas, nor shall print, buy, or sell any Popish primer, ladies psalters, manuals, rosaries, Popish catechisms, missals, breviaries, portals, legends and lives of saints containing superstitious matter, printed or written in any language whatsoever, nor any other superstitious books printed or written in the English tongue, on pain of forfeiting forty shillings for every book, &c. and the books to be burnt."

Catholic books shall not be imported into England.

4. Comm. 115.

See 3. & 4. Ed. 6. c. 10.

13. Eliz. c. 2.

CHAP.

CHAPTER. THE SIXTEENTH.

OF PROTESTANT DISSENTERS.

OBSTINATE non-conformists were formerly compellable by the statute 31. Eliz. c. 1. to abjure the realm; and were also subject to all the penalties inflicted by the statutes of 1. Eliz. c. 2. the 23. Eliz. c. 1. and 3. Jac. 1. c. 4. for neglecting divine worship according to the rites of THE NATIONAL CHURCH. Dissenters also were farther restrained by the statutes 29. Eliz. c. 6. 35. Eliz. c. 1. the 17. Car. 2. c. 2. the 22. Car. 2. c. 1. and 3. Jac. 1. c. 5.

The penal statutes against *Papists* and Dissenters, except 25. Car. 2. c. 2. and 30. Car. 2. ft. 2. c. 1. shall not be put in force against any *Protestant Dissenter* who shall take the oaths and declaration mentioned in THE TOLERATION ACT, &c.

† *Sec.* 1. But by THE TOLERATION ACT, 1. Will. and Mary, c. 18. reciting, “ That as some ease to scrupulous consciences in the exercise of religion may be an effectual means to unite their Majesties *Protestant subjects* in interest and affection, IT IS ENACTED, that neither the statutes of the 23. Eliz. c. 1. nor the 29. Eliz. c. 6. nor the 3. Jac. 1. c. 4. nor the 3. Jac. 1. c. 5. nor any other law or statute of this realm made against *Papists* or *Popish recusants*, except the statute 25. Car. 2. c. 2. and the 30. Car. 2. ft. 2. c. 1. shall be construed to extend to any person or persons dissenting from the church of England, that shall take the oaths mentioned in the statute 1. Will. and Mary, c. 1. and shall make and subscribe the declaration mentioned in the statute 30. Car. 2. ft. 2.; which oaths and declaration the justices of peace at the general sessions of the peace to be held for the county or place where such person shall live, are hereby required to tender and administer to such persons as shall offer themselves to take, make, and subscribe the same, and thereof to keep a register: and no persons aforesaid shall pay a fee to any officer belonging to the court above the sum of *sixpence*, nor that more than once, for entry of taking the oaths, and making and subscribing the declaration; nor above the further sum of *sixpence* for any certificate of the same to be made out and signed by the officer or officers of the said court.”

Protestant Dissenters who shall take the oaths, though after conviction,

† *Sec.* 2. By 1. Will. and Mary, c. 18. s. 3. “ Every person convicted or prosecuted of recusancy by indictment, information, action of debt, or otherwise upon the said

“ statutes,

“ statutes, or any of them, that shall take the said oaths, and
 “ make and subscribe the declaration in the court of ex-
 “ chequer, or assizes, or general or quarter sessions for the
 “ county where such person lives, and to be thence re-
 “ spectively certified into THE EXCHEQUER, shall be thence-
 “ forth exempted and discharged from all the penalties,
 “ seizures, forfeitures, judgments, and executions incurred
 “ by force of any of the said statutes, without any com-
 “ position, fee, or further charge whatsoever.”

† *Secl.* 3. By 1. Will. and Mary, c. 18. s. 4. “ Every per-
 “ son that shall take the said oaths, and make and subscribe
 “ the declaration, shall not be liable to any pains, penal-
 “ ties, or forfeitures mentioned in 35. Eliz. c. 1. nor 22.
 “ Car. 2. c. 1. Nor shall any of the said persons be pro-
 “ secuted in any ecclesiastical court, for or by reason of
 “ their *nonconforming* to the Church of England.”

Protestant Dis-
 senters ex-
 empted from
 the penalties
 of attending
conventicles.

† *Secl.* 4. But by 1. Will. and Mary, c. 18. s. 5. it is
 provided, “ That if any assembly of persons dissenting from
 “ the Church of England shall be had in any place for reli-
 “ gious worship with the doors locked, barred, or bolted,
 “ during any time of such meeting together, all and every
 “ person or persons that shall come to, and be at such
 “ meeting, shall not receive any benefit from this law, but
 “ be liable to all the pains and penalties of all the aforesaid
 “ laws recited in this act for such their meeting, notwith-
 “ standing his taking the *oaths*, and making and subscrib-
 “ ing the *declaration* aforesaid.”

But the *meet-
 ing-houses*
 shall be open
 during ser-
 vice.

† *Secl.* 5. But by 1. Will. and Mary, c. 18. s. 6. “ No-
 “ thing herein contained shall exempt any of the persons
 “ aforesaid from paying of *tithes* or other *parochial duties*, or
 “ any other duties to the church or minister, nor from any
 “ prosecution in any ecclesiastical court or elsewhere for the
 “ same.”

Dissenters
 shall pay
tithes, and
 other *parochial
 dues.*

† *Secl.* 6. By 1. Will. and Mary, c. 18. s. 7. “ If any
 “ person dissenting from the Church of England as afore-
 “ said shall hereafter be chosen, or otherwise appointed to
 “ bear the office of high constable or petty constable,
 “ churchwarden, overseer of the poor, or any other paro-
 “ chial or ward office, and such person shall scruple to take
 “ upon him any of the said offices in regard of the oaths,
 “ or any other matter or thing required by the law to be
 “ taken or done in respect of such office, every such person
 “ shall and may execute such office or employment by a
 “ sufficient deputy, by him to be provided, that shall com-
 “ ply

If any Pro-
 testant Dis-
 senter shall be
 chosen to any
*parish or ward
 office*, and shall
 scruple to take
 the oaths, he
 may serve by
deputy.

“ply with the laws on this behalf. PROVIDED the said deputy be allowed and approved by such person or persons, in such manner as such officer or officers respectively should by law have been allowed and approved.”

Protestant Dissenting Ministers who shall make and subscribe, THE DECLARATION and take THE OATHS and approve of the *Thirty-five* Articles, shall not be liable to any of the pains and penalties inflicted by the 17. Car. 2. c. 2. and the 13. & 14. Car. 2. c. 2.

† *Sec. 7.* By 1. Will. and Mary, c. 18. s. 8. “No person dissenting from the Church of England in holy orders, or pretended holy orders, or pretending to holy orders, nor any preacher or teacher of any congregation of dissenting Protestants, that shall make and subscribe the declaration aforesaid, and take the said oaths at the general or quarter sessions of the peace to be held for the county, town, part or division where such person lives, which court is hereby empowered to administer the same, and shall also declare his approbation of, and subscribe the *Articles of Religion* mentioned in the 13. Eliz. c. 2. except the ‘Thirty-fourth, ‘Thirty-fifth, and ‘Thirty-sixth, and these words of the ‘Twentieth Article, *viz.* ‘The Church hath power to decree rites or ceremonies, and authority in controversies of faith,’ shall be liable to any of the pains or penalties mentioned in an act made in the 17. Car. 2. c. 2. nor the 22. Car. 2. c. 1. for or by reason of such persons preaching at any meeting for the exercise of religion; nor to the penalty of one hundred pounds mentioned in ‘13.* & 14. Car. 2. c. 2. for officiating in any congregation for the exercise of religion permitted and allowed by this act.”

Then taking the oaths and subscribing the declaration and approving the Articles to be registered at the quarter sessions.

† *Sec. 8.* But by 1. Will. and Mary, c. 18. s. 9. it is PROVIDED, “That the making and subscribing the said declaration, and the taking the said oaths, and making the declaration of approbation and subscription to the said Articles, in manner as aforesaid, by every respective person or persons herein-before-mentioned, at such general or quarter sessions of the peace as aforesaid, shall be then and there entered of record in the said court, for which six-pence shall be paid to the clerk of the peace, and no more. Provided that such person shall not at any time preach in any place but with the doors not locked, barred, or bolted, as aforesaid.”

Anabaptists exempted from the penalties of the Statutes.

† *Sec. 9.* By 1. Will. and Mary, c. 18. s. 10. “And as some dissenting Protestants scruple the baptizing of infants, IT IS ENACTED, that every person in pretended holy orders, or pretending to holy orders, or preacher, or teacher, that shall subscribe the aforesaid Articles of Religion, except before excepted, and also except part of the Seven and-twentieth Article touching *Infant Baptism*, and shall take the said oaths, and make and subscribe the
“declara-

“ declaration aforesaid, in manner aforesaid, every such
 “ person shall enjoy all the privileges, benefits, and ad-
 “ vantages which any other dissenting minister, as afore-
 “ said, might have or enjoy by virtue of this act.”

† *Secl.* 10. By 1. Will. and Mary, c. 18. s. 11. “ Every Protestant Dis-
 “ teacher or preacher in holy orders, or pretended holy orders, senting *Minis-*
 “ that is a minister, preacher or teacher of a congregation, ters ex-
 “ that shall take the oaths herein required, and make and empted from
 “ subscribe the declaration aforesaid, and also subscribe such serving on *ju-*
 “ of the aforesaid Articles of the Church of England as are ries and from
 “ required by this act in manner aforesaid, shall be thence- parochial and
 “ forth exempted from serving upon any jury, or from ward offices.
 “ being chosen or appointed to bear the office of church-
 “ warden, overseer of the poor, or any other parochial or
 “ ward office, or other office in any hundred of any shire, (a) By 2.
 “ city, town, parish, division, or wapentake (a).” Geo. 3. c. 20.
 they are also exempted from serving in the militia.

† *Secl.* 11. By 1. Will. and Mary, c. 18. s. 12. “ Every A justice of
 “ justice of the peace may require any person that goes the peace may
 “ any meeting for exercise of religion, to make and sub- require any
 “ scribe the declaration aforesaid, and also to take the oaths person who
 “ or declaration of fidelity herein-after-mentioned, in case goes to a Dis-
 “ such person scruples the taking of an oath; and upon senting meet-
 “ refusal thereof, such justice of the peace is hereby re- ing-house, to
 “ quired to commit such person to prison without bail or take the oaths
 “ mainprize, and to certify the name of such person to the and make the
 “ next general or quarter sessions of the peace to be held for declaration.
 “ that county, city, town, part or division where such
 “ person then resides; and if such person so committed
 “ shall, upon a second tender at the general or quarter ses-
 “ sions, refuse to make and subscribe the declaration afore-
 “ said, such person refusing shall be then and there re-
 “ corded, and he shall be taken thenceforth, to all intents
 “ and purposes, for a Popish recusant convict, and suffer
 “ accordingly, and incur all the penalties and forfeitures of
 “ all the aforesaid laws.”

† *Secl.* 12. By 1. Will. and Mary, c. 18. s. 13. “ AND Quakers ex-
 “ As there are certain other persons, dissenters from the empted.
 “ church of England, who scruple the taking of any oath (a),
 “ IT IS ENACTED, that every such person shall make and
 “ subscribe the aforesaid declaration, and also this declara-
 “ tion of fidelity:

(a) See 7. & 8. Will. 3. c. 34. and the case of *Atcheson v. Everet*, Cowper, 387;
 and 2. Burr. E. L. 18. for cases in which a Quaker may make affirmation. See also
 8. Geo. 1. c. 6.

† *Secl.*

DECLARATION of fidelity.
See 2. Burr.
c. 1002.

(a) See post.
sect. 23. another form of declaration appointed.

† Sect. 13. *I A. B. do sincerely promise and solemnly declare before GOD and THE WORLD, that I will be true and faithful to his Majesty King George the Third; and I do solemnly profess and declare, that I do from my heart abhor, detest, and renounce as impious and heretical, that damnable doctrine and position, that princes excommunicated or deprived by THE POPE, or any authority of the SEE OF ROME, may be deposed or murdered by their subjects, or any other whatsoever. And I do declare, that no foreign prince, person, prelate, state, or potentate, hath, or ought to have, any power, jurisdiction, superiority, preeminence or authority ecclesiastical or spiritual within this realm (a)."*

"And shall subscribe a profession of their Christian belief in these words:

Profession of their Christian faith.

(b) See post.
sect. 23.

† Sect. 14. *I A. B. profess faith in God the Father, and in Jesus Christ his eternal son, the true God, and in the Holy Spirit, one God blessed for evermore; and do acknowledge the holy scriptures of the Old and New Testament to be given by divine inspiration (b).*

"Which declarations and subscription shall be made and entered of record at the general quarter sessions of the peace for the county, city, or place where every such person shall then reside. And every such person that shall make and subscribe the two declarations and professions aforesaid, being thereunto required, shall be exempted from all the pains and penalties of all and every the aforementioned statutes made against Popish recusants, or Protestant nonconformists, and also from the penalties of 5. Eliz. c. 1. for or by reason of such persons not taking or refusing to take the oath mentioned in the said act; and also from the penalties of 13. & 14. Car. 2. c. 4. and enjoy all other the benefits, privileges, and advantages, under the like limitations, provisions, and conditions, which any other Dissenters shall or ought to enjoy by virtue of this act."

If any person shall refuse to take the oaths when tendered by a justice of the peace, or at the sessions, such persons shall not be admitted to make the two declarations aforesaid, without proving himself to be a Protestant Dissenter.

† Sect. 15. But by 1. Will. and Mary, c. 18. s. 15. it is provided, "That in case any person shall refuse to take the said oaths, when tendered to them, which every justice of the peace is hereby impowered to do, such person shall not be admitted to make and subscribe the two declarations aforesaid, though required thereunto, either before any justice of the peace, or at the general or quarter sessions."

"ter

“ter sessions, before or after any conviction of *Papish recusancy*, as aforesaid, unless such person can, within thirty-one days after such tender of the declarations to him, produce two sufficient Protestant witnesses to testify upon oath that they believe him to be a Protestant Dissenter, or a certificate under the hands of four Protestants who are conformable to the Church of England, or have taken the oaths and subscribed the declaration above-mentioned, and shall also produce a certificate under the hands and seals of six or more sufficient men of the congregation to which he belongs, owning him for one of them.”

† *Seet.* 16. By 1. Will. and Mary, c. 18. s. 15. “Until such certificate under the hands of six of his congregation, as aforesaid, be produced, and two Protestant witnesses come to attest his being a *Protestant Dissenter*, or a certificate under the hands of four Protestants, as aforesaid, be produced, the justice of the peace shall, and hereby is required to take a recognizance with two sureties in the penal sum of fifty pounds, to be levied of his goods and chattels, lands and tenements, to the use of the king and queen, their heirs and successors, for his producing the same; and if he cannot give such security, to commit him to prison, there to remain until he has produced such certificates, or two witnesses, as aforesaid.”

The proof to be under the hands of six of his congregation, &c.

† *Seet.* 17. By 1. Will. and Mary, c. 18. s. 16. “All the laws made and provided for the frequenting of *divine service* on the Lord’s day, commonly called *Sunday* (a), shall be still in force, and executed against all persons that offend against the said laws, except such persons come to some congregation or assembly of religious worship allowed or permitted by this act.”

The Lord’s day still to be observed.

(a) See ante, page 13.

† *Seet.* 18. By 1. Will. and Mary, c. 18. s. 17. “This act shall not extend to give any ease, benefit, or advantage to any *Papist* or *Papish recusant* whatsoever; or any person that shall deny in his preaching or writing the doctrine of the Blessed Trinity, as it is declared in the aforesaid Articles of Religion.”

No *Papist* shall have any benefit by this act.
Vide ante, page 21.

† *Seet.* 19. By 1. Will. and Mary, c. 18. s. 18. “If any person or persons shall willingly and of purpose maliciously or contemptuously come into any cathedral or parish church, chapel, or other congregation permitted

Persons disturbing *Protestant Dissenters* in any meeting-house, or mistaking any *Protestant*

Dissenting Minister, shall forfeit FIFTY POUNDS.

“ by

(a) See post. sect. 31. where this offence, when riotously committed, is made felony.

But such meeting-house must be certified to the bishop of the diocese, or to the quarter sessions, and there respectively registered.

Protestant Dissenters not in holy orders, or pretended holy orders, who shall, during any prosecution, qualify according to THE TOLERATION ACT, shall be discharged from all penalties.

“ by this act, and disquiet or disturb the same, or misuse
 “ any preacher or teacher, such person or persons, upon
 “ proof thereof before any justice of peace, by two or more
 “ sufficient witnesses, shall find two sureties to be bound
 “ by recognizance in the penal sum of fifty pounds,
 “ and in default of such sureties, shall be committed to
 “ prison, there to remain till the next general or quarter
 “ sessions; and upon conviction of the said offence at the
 “ said general or quarter sessions, shall suffer the pain and
 “ penalty of twenty pounds to the use of the king and queen,
 “ their heirs and successors (a).”

† Sect. 20. By 1. Will. and Mary, c. 18. s. 19. “ No
 “ congregation or assembly for religious worship shall be
 “ permitted or allowed by this act, until the place of such
 “ meeting shall be certified to the bishop of the diocese, or
 “ to the archdeacon of that archdeaconry, or to the justices
 “ of the peace at the general or quarter sessions of the peace
 “ for the county, city, or place in which such meeting
 “ shall be held, and registered in the said bishop’s or arch-
 “ deacon’s court respectively, or recorded at the said ge-
 “ neral or quarter sessions; the register or clerk of the
 “ peace whereof respectively is hereby required to register
 “ the same, and to give certificate thereof to such person
 “ as shall demand the same, for which there shall be none
 “ greater fee nor reward taken than the sum of sixpence.

† Sect. 21. By 10. Ann. c. 2. s. 8. “ If any person
 “ dissenting from the Church of England (not in holy or-
 “ ders, or pretended holy orders, or pretending to holy
 “ orders, nor any preacher or teacher of any congregation)
 “ who should have been intitled to the benefit of THE TO-
 “ LERATION ACT, if such person had duly taken, made,
 “ and subscribed the oaths and declaration, or otherwise qua-
 “ lified him or herself as required by the said act, shall be
 “ prosecuted upon, or by virtue of, any of the penal sta-
 “ tutes from which Protestant Dissenters are exempted by the
 “ said act, shall at any time during such prosecution take,
 “ make, and subscribe the said oaths and declarations, or,
 “ being of the people called Quakers, shall make and sub-
 “ scribe the aforesaid declaration, and also the declaration of
 “ fidelity, and subscribe the profession of their Christian be-
 “ lief according to the said act, or before any two justices
 “ of the peace, such person shall be intitled to the benefit of
 “ the said act as fully and effectually as if such person had
 “ duly qualified himself within the time prescribed by the
 “ said act, and shall be thenceforth exempted and discharged
 “ from all the penalties and forfeitures incurred by force of
 “ any of the aforesaid penal statutes.”

† Sect.

† *Sec. 22.* By 10. Ann. c. 3. f. 9. "Any preacher or teacher of any congregation of *dissenting Protestants* duly, in all respects, qualified according to THE TOLERATION ACT, shall be allowed to officiate in any congregation, although the same be not in the county wherein he was so qualified, PROVIDED that the said congregation, or place of meeting, has been, before such officiating, duly certified and registered, or recorded according to the said act: and such preacher or teacher shall, if required, produce A CERTIFICATE of his having so qualified himself, under the hand of the clerk of the peace for the county or place where he so qualified himself; and shall also, before any justice of the peace of such county or place where he shall so officiate, make and subscribe such declaration, and take such oaths, as are mentioned in the said act, if thereunto required."

Dissenting preachers duly qualified may officiate in any dissenting congregation in any county on producing a certificate and taking the oath if required.

See the case of Reg. v. Peach, 2. Salk: 572.

† *Sec. 23.* By 19. Geo. 3. c. 44. which declares the 1. Will. & Mary c. 18. to be a *public act*, "every person dissenting from the church of England, in holy orders, or pretended holy orders, or pretending to holy orders, being a preacher or teacher of any congregation of *dissenting Protestants*, who, if he scruple to declare and subscribe as required by 13. Eliz. c. 12. shall take the oaths, and make and subscribe the declaration against Popery required by the said act of 1. Will. & Mary to be taken made and subscribed by Protestant dissenting ministers, and shall also make and subscribe a declaration in the words following: *I A. B. do solemnly declare, in the presence of Almighty God, that I am a Christian and a Protestant, and as such that I believe that the scriptures of the Old and New Testament, as commonly received among Protestant churches, do contain the revealed will of God; and that I do receive the same as the rule of my doctrine and practice,* shall be, and every such person is hereby declared to be, intitled to all the exemptions, benefits, privileges, and advantages of 1. Will. & Mary c. 18. and 10. Ann. c. 2. and the justices of the peace at the general sessions of the peace where any Protestant dissenting minister shall live, are required to administer the last mentioned declaration to such minister, upon his offering himself to make and subscribe the same."

Dissenting preachers who shall scruple to make and subscribe the declaration, &c. required 13. Eliz. c. 12. shall be duly qualified on making and subscribing the declaration 1. Will. & Mary, c. 18. and the 19. Geo. 3. c. 44.

Sec. 24. By 19. Geo. 3. c. 44: f. 2. "No Protestant dissenter so qualified shall be prosecuted for teaching and instructing youth, as a tutor or schoolmaster, in any case whatsoever."

Protestant dissenters shall not be prosecuted.

Stat. 25. But by 19. Geo. 3. c. 44. s. 3. it is provided,
 " That this qualification shall not intitle such dissenters to
 " obtain or hold the mastership of any college or school of
 " royal foundation, or of any other endowed college or
 " school for the education of youth, unless founded since
 " 1. Will. & Mary for the immediate use and benefit of
 " Protestant dissenters."

Upon these statutes the following determinations have been made.

Hutchinson and his wife v. Brooksbank, 3. Lev. 376. See also Gibson's Codex, 519. † *Stat. 26.* That if a man and woman, being dissenters, and having qualified themselves pursuant to THE TOLERATION ACT, be married in the face of their congregation properly licensed in the presence of witnesses according to the statute, and after banns published according to the discipline of the said congregation, and be afterwards libelled against in the ecclesiastical court for incontinence and fornication, the courts of common law will grant a prohibition (*a*).

(*a*) But by the marriage act 26. Geo. 2. c. 33. all marriages not celebrated in a church or public chapel, except the parties be *Quakers* or *Jews*, are declared void.

Trebec v. Keith, 2. Atk. 498. † *Stat. 27.* That these statutes being made to protect persons of tender consciences from penalties, do not extend to exempt clergymen of the church of England from the consequences of acting contrary to the rules and discipline of the church; as for officiating in a chapel of ease without a license from the bishop.

2. Burn's E.L. 79. † *Stat. 28.* That the Toleration Act does not extend to all persons whatsoever who shall think fit to style themselves *Protestant dissenters*, but in order to be entitled to the benefits of it, they must first qualify as is therein directed; and therefore it was said by HOLT, *chief justice (b)*, that if a man be a *professed churchman*, and his conscience will permit him sometimes to go to meetings instead of coming to church, the TOLERATION ACT shall not excuse him, for it was not made for such sort of people.

Attorney-General v. Cock, 2. Vezey, 273. † *Stat. 29.* That a devise of an annuity to the minister of a Baptist meeting-house is a good charitable use, and that the court of chancery will enforce its execution.

Rex v. Bonner, 2. Burr. 1265. † *Stat. 30.* That if a house be granted to a dissenting minister and others in trust to suffer the said meeting-house to be for the public worship of God by such congregation of Protestant dissenters, commonly called Presbyterians, as shall attend the said minister, or his successors, regularly and fairly chosen and appointed to be the minister in the said meet-

meeting, the court will grant a *mandamus* to the trustees to admit a minister regularly elected, or to restore one improperly displaced; but in order to obtain a *mandamus* to be restored, it is necessary for the dissenting minister to shew a *prima facie* title to the office.

Rex v. Jotham,
3. Term Rep.
275.

† Sect. 31. That if a certain tenement be certified to the quarter sessions as a place set apart for the meeting of Protestant dissenters, the court will grant a *mandamus* to the justices to register such place pursuant to the Toleration Act, for in such case the justices are merely ministerial.

Rex v. Justices
of Derbyshire,
1. Black Rep.
656. 2. Burr.
1043.

Ld. Ray. 125.

† Sect. 32. That the court of king's bench also will grant an *information* for disturbing a congregation assembled for the purpose of divine worship in any meeting registered pursuant to the Toleration Act.

Gibb. 304.

† Sect. 33. And by the statute 1. Geo. 1. st. 2. c. 5. "If any persons unlawfully, riotously, and tumultuously assembled together to the disturbance of the public peace, shall unlawfully and with force demolish and pull down, or begin to demolish and pull down any church or chapel, or any building for religious worship certified and registered according to THE TOLERATION ACT, every such demolishing or pulling down, or beginning to demolish or pull down, shall be felony without clergy;"—and the hundred is made liable to pay the damage thereby done.

See post. ch.
65. sect. 56.

CHAPTER THE SEVENTEENTH.

OF HIGH TREASON.

OF OFFENCES against MAN, some are more immediately against THE KING, others more immediately against the subject.

Prin.P.L.116.

Offences more immediately against THE KING are either capital or not capital. The capital offences of this nature are either HIGH TREASON or FELONIES.

And FIRST, Of HIGH TREASON.

Sec. 1. Before the 25. Edw. 3. c. 2. there was great diversity of opinions concerning high treason; and many offences were taken to be included in it, besides those expressed in the said statute; as the killing of the king's father, brother, or even his messenger; producing the pope's bull of excommunication, and pleading it in disability; refusing to accuse a man in the king's courts, and summoning him to appear, and defend himself before a foreign prince; and other such like acts tending to diminish the royal dignity of the crown.

3. Inst. 7.
B. Trea. 14.
22. Aff. 49.
30. Aff. 19.
Staunf. 2.
Prin.P.L.126.
to 130.
1. Hale 76. to
87.

Sec. 2. But all TREASONS were settled by the statute of 25. Edw. 3. c. 2. which, by 1. Mary, sess. 1. c. 1. was re-inforced, and again made the only standard of treason. All statutes, therefore, between the statute of 25. Edw. 3. and the statute 1. Mary, sess. 1. c. 1. which made any offence high treason or petit treason, or misprision of treason, are abrogated; so that no offence is, at this day, to be esteemed high treason, unless it be either declared to be such by the above statute of king *Edward the Third*, or made such by some statute since the first of *queen Mary*.

Plow. 86.
3. Inst. 12. 21.
28. Eliz. c. 1.

I shall therefore consider, FIRST, Such offences as are high treason within the said statute of 25. Edw. 3. or other statutes grounded thereon, and explaining the same.—SECONDLY, Such as are made high treason by subsequent statutes.

By the statute of *Edward the Third* there are four kinds of HIGH TREASON;

1. Hale 87.
Sum. 17.

1. That which immediately concerns the king, his wife, or children.

2. That

2. That which concerns his office in the administration of justice.

3. That which concerns his seal.

4. That which concerns his coin.

And these three last are called Interpretative Treasons.

HIGH TREASON concerning the king, his wife, and children, is thus declared :

SECT. 3. By the said statute of 25. Edw. 3. stat. 5. c. 2. 1. H. 4. c. 10. Kely. 20.
 " Whereas divers opinions have been before this time, in
 " what case treason shall be said, and in what not, the 3. Inst. 1. 6. 113.
 " king, at the request of the lords and of the commons, 8. Co. 28.
 " hath made a declaration in the manner as hereafter fol- Dyer 98. 298.
 " loweth; that is to say, when a man doth compels or 128 332.
 " imagine the death of our lord the king, or of our lady B. Trea. 1, 2,
 " the queen, or of their eldest son and heir; or if a man 3. 7. 9. 11. 13.
 " do violate the king's companion, or the king's eldest 16. 19. 24. 27.
 " daughter unmarried; or the wife of the king's eldest 32.
 " and heir; or if a man do levy war against our lord the Co. Pla. 360.
 " king in his realm, or be adherent to the king's enemies 3. Co. 2. 10.
 " in his realm, giving them aid and comfort in the realm 4. Co. 57.
 " or elsewhere, and therefore be *provably* attainted of *open* 7. Co. 33.
 " *deed* by the people of their condition." 13. Co. 54.
 Savil 4.

For the explication of which I shall consider,

FIRST, The branch relating to the king and his relations.

SECONDLY, That concerning the levying of war, and adhering to the king's enemies, &c.

THIRDLY, That concerning an overt act.

I. As to the branch relating to the king and his relations, I shall consider the following particulars: 1. Who may be guilty? 2. What is the import of the words, "*compels or imagine the king's death?*" 3. Who is a king within the act? 4. What is the extent of the clause concerning the king's relations?

SECT. 4. As to the FIRST POINT, viz. Who may be guilty? I shall take it for granted at this day, that all subjects of the age of discretion, and of sane memory, whether they
 Kellw. 181. &c.
 3. Inst. 4. 8.
 4. Comm. 29.
 Bac. Max. 56.
 5. Bac. Ab. 118.

they be ecclesiastical or temporal, men or women, are included within those general words, "When a man doth compass, &c."

(a) B. Trea. 32. *Sec. 5.* Also it seems clear, that the subjects of a foreign prince coming into *England*, and living under the protection of our king, may, in respect of that *local ligeance* which they owe to him, be guilty of high treason (a), and indicted (1), that they *contra dominum regem* (the words *naturalem dominum suum* being omitted) did compass, &c. *contra ligeantiam suam debitum* (b). And it is said, that even an ambassador committing a treason *against the king's life*, may be condemned and executed here; and that for other treasons he shall be sent home. And it hath been holden, that there is no need of the words *contra ligeantiam suam debitum* in an indictment for a treason which is made such by statute, and is not a treason in its own nature; and that there is no necessity for the words *contra legem supremum dominum suum* in any indictment of treason.

3. Inst. 5. 11. Calvin's case, 6. Co. Lit. 129. Sum. 1. 15. 1. Hale 96. — 100. 5. St. Tr. 23. 6. St. Tr. 87. (b) Dyer 145. Hob. 271. Saik. 631. 633. Carth. 319. Skin. 360. 425. Fof. 186, 187. L. Ray. 1. 3. Lev. 396. 4. Mod. 162. 395. 7. Co. 6. 12. Mod. 51. 95. 1. Hale 59.

(1) On the 12th June 1707, a rule to the following effect was laid down by all the judges: "If an alien, seeking protection in England, and having a family and effects here, should, during a war with his native country, go thither, and there adhere to the king's enemies for *purpose of hostility*, he may be dealt with as a traitor." Foster's C. L. 185.

B. Trea. 1. 34. *Sec. 6.* But it seemeth that aliens, who in a hostile manner invade the kingdom, whether their king were at war or peace with ours, and whether they come by themselves or in company with English traitors, cannot be punished as traitors, but shall be dealt with by martial law.

3. Inst. 11. Con. Duff. 32. 7. Co. Rep. 6. 5. Bac. Ab. 112. 5. St. Tr. 23.

(c) Dr. Storey's case, Dy. 20. *Sec. 7.* It hath been resolved (c), That one born a natural subject is bound to such an inseparable allegiance to our king, that howsoever he may endeavour to renounce it, and transfer his subjection from his natural to a foreign prince, yet if he practise what in any other subject would amount to high treason, he shall suffer as a traitor.

Co. Lit. 107. 1. Hale 68. 96. and for Max. domine's case, Foster C. L. 59. and 185.

Kely. 8. *Sec. 8.* As to THE SECOND POINT, viz. the import of the words "compass or imagine the king's death;" since the said statute these words have been to strictly followed, that where a king has been actually murdered, yet not the killing him, but the compassing his death has in the indictment been laid as the treason, and the killing as an overt act thereof.

1. Hale 107. 110. — 157. Prin. P. L. 123. Fof. 193. 196. 4. Inst. 12.

Sec. 9. And such compassing the king's death may be manifested not only by overt acts of a direct conspiracy to take away his life, but also by such as shew such a design as cannot be executed without the apparent peril thereof; as by (a) writing letters to a foreign prince, inciting him to invade the realm; or assembling men together in order to imprison or (c) depose the king, or to (d) compel him by force to yield to certain demands, or to levy war against his (e) person (2).
 (a) Dyer 298. Burr. 646. Sum. 11. 1. St. Tr. 199. 206. 2. Vern. 315. 3. Inst. 14. 4. St. Tr. 406. 1. Hale 120. (b) 3. Inst. 6. 12. 38. (c) Kely. 20, 21, 22. Qu. B. Trea. 24. (d) 11. Mod. 322. Moor, 621. (e) Kely. 14, 15, 17, 20, 21. 3. Inst. 6. 12. 38. Kely. 20, 21, 22. Yet this was made a query in B. Trea. 24. 11. Mod. 322. Moor 621. Kely 14, 15, 20, 21.

(2) Every thing wilfully and deliberately designed, or attempted to be done, whereby the life of Majesty may be endangered, is an act of compassing his death. Fof. 195. but the guilt commences only when *some measure* shall appear to have been taken to effectuate the guilty purpose. Prin. P. L. 121. 1. Hale 119. Kely. 17.

Sec. 10. But it is possible that it may not be proved by an act which directly causes the king's death, as the glancing of an arrow did that of *William Rufus*, proving fatal merely through an unfortunate accident, and being accompanied with no unlawful circumstance.
 3. Inst. 6. 1. Hale 107.

Sec. 11. As to THE THIRD POINT, viz. Who is a king within this act? it seems agreed, that every king for the time being, in actual possession of the crown, is a king within the meaning of this statute. For there is a necessity that the realm should have a king, by whom and in whose name the laws shall be administered; and the king in possession being the only person who either doth or can administer those laws, must be the only person who has a right to that obedience which is due to him who administers those laws; and since by virtue thereof he secures to us the safety of our lives, liberties, and properties, and all other advantages of government, he may justly claim returns of duty, allegiance, and subjection.
 3. Inst. 7. 0. Ed. 4. 1. 1. Hale 101. &c. Fof. 188. 400. 4. Comm. 77.

Sec. 12. And this plainly appears even by the prevailing opinions in the time of king *Edward the Fourth*, in whose reign the distinction between a king *de jure* and *de facto* seems first to have begun; and yet it was then laid down as a principle, and taken for granted in the arguments of *Bagot's Case*, that a treason against *Henry the Sixth* while he was king, in compassing his death, was punishable after *Edward the Fourth* came to the crown; from which it follows, that allegiance was allowed to have been due to *Henry the Sixth* while he was king, because
 1. Hale 61. 102. Stow. Ann. 418. Fof. 398. 186. 0. Ed. 4. 1. B. Trea. 10. 32. 3. Inst. 7. Dalt. 223.

cause every indictment of treason must lay the offence *contra ligeantiae debitum*.

9. Ed. 4. 1, 2. *9. Ed. 4. 1, 2.* *9. Ed. 4. 1, 2.* *9. Ed. 4. 1, 2.* *9. Ed. 4. 1, 2.*
11. Judg. 42. *11. Judg. 42.* *11. Judg. 42.* *11. Judg. 42.* *11. Judg. 42.*
C. of Par. 22. *C. of Par. 22.* *C. of Par. 22.* *C. of Par. 22.* *C. of Par. 22.*
Patents 21. *Patents 21.* *Patents 21.* *Patents 21.* *Patents 21.*
Denizen 3. *Denizen 3.* *Denizen 3.* *Denizen 3.* *Denizen 3.*
Exempt 4. *Exempt 4.* *Exempt 4.* *Exempt 4.* *Exempt 4.*
Judg. 42 F. *Judg. 42 F.* *Judg. 42 F.* *Judg. 42 F.* *Judg. 42 F.*
Aff. 29. Deniz. 1. *Aff. 29. Deniz. 1.* *Aff. 29. Deniz. 1.* *Aff. 29. Deniz. 1.* *Aff. 29. Deniz. 1.*

4. Inst. 43. *4. Inst. 43.* *4. Inst. 43.* *4. Inst. 43.* *4. Inst. 43.*
1. Bl. Com. 90. *1. Bl. Com. 90.* *1. Bl. Com. 90.* *1. Bl. Com. 90.* *1. Bl. Com. 90.*
4. Bl. Com. 78. *4. Bl. Com. 78.* *4. Bl. Com. 78.* *4. Bl. Com. 78.* *4. Bl. Com. 78.*

Sett. 13. It was also settled, That all judicial acts done by *Henry the Sixth* while he was king, and also all pardons of felony and charters of denization granted by him, were valid; but that a pardon made by *Edward the Fourth* before he was actually king, was void even after he came to the crown.

Sett. 14. And by the 11. Hen. 7. c. 1. it is declared, "That all subjects are bound by their allegiance to serve their prince and sovereign lord for the time being in his wars, for the defence of him and his land against every rebellion, power, and might reared against him, &c. and that it is against all laws, reason and good conscience, that they should lose or forfeit any thing for so doing;" and it is enacted, "That from thenceforth no person or persons that attend on the king for the time being, and do him true and faithful allegiance in his wars, within the realm or without, shall for the said deed and true duty of allegiance be convicted of any offence."

Foster 399. *Foster 399.* *Foster 399.* *Foster 399.* *Foster 399.*
Cuf. de Nor- *Cuf. de Nor-* *Cuf. de Nor-* *Cuf. de Nor-* *Cuf. de Nor-*
mand. 13. *mand. 13.* *mand. 13.* *mand. 13.* *mand. 13.*
Fleta. b. 3. c. 16. *Fleta. b. 3. c. 16.* *Fleta. b. 3. c. 16.* *Fleta. b. 3. c. 16.* *Fleta. b. 3. c. 16.*
f. 22. *f. 22.* *f. 22.* *f. 22.* *f. 22.*

Sett. 15. From hence it clearly follows, First, That every king for the time being has a right to the people's allegiance, because they are bound thereby to defend him in his wars against every power whatsoever.

4. Comm. 77. *4. Comm. 77.* *4. Comm. 77.* *4. Comm. 77.* *4. Comm. 77.*
Foster 188. *Foster 188.* *Foster 188.* *Foster 188.* *Foster 188.*

Sett. 16. Secondly, That one out of possession is so far from having any right to our allegiance by virtue of any other title which he may set up against the king in being, that we are bound by the duty of our allegiance to resist him.

Foster 402. *Foster 402.* *Foster 402.* *Foster 402.* *Foster 402.*
Kely. 14. *Kely. 14.* *Kely. 14.* *Kely. 14.* *Kely. 14.*

Sett. 17. It is true indeed, that after the restoration of king *Charles the Second*, it was resolved, that all those who acted against, and kept him out of possession, in obedience to the powers then in being, were traitors.

Kelv. 14, 15. *Kelv. 14, 15.* *Kelv. 14, 15.* *Kelv. 14, 15.* *Kelv. 14, 15.*
1. Keb. 3. 5. *1. Keb. 3. 5.* *1. Keb. 3. 5.* *1. Keb. 3. 5.* *1. Keb. 3. 5.*
Foster 4. 3. *Foster 4. 3.* *Foster 4. 3.* *Foster 4. 3.* *Foster 4. 3.*
4. Comm. 77. *4. Comm. 77.* *4. Comm. 77.* *4. Comm. 77.* *4. Comm. 77.*

Sett. 18. But it ought to be considered, that it was first resolved by the same judges, that king *Charles the Second* was king *de facto* as well as *de jure* from his father's death; and it is apparent, that no other person was in possession of any sovereign power known to our laws.

3. Inst. 7. *3. Inst. 7.* *3. Inst. 7.* *3. Inst. 7.* *3. Inst. 7.*
1. Hale 61. 102. *1. Hale 61. 102.* *1. Hale 61. 102.* *1. Hale 61. 102.* *1. Hale 61. 102.*
Fol. 188, 189. *Fol. 188, 189.* *Fol. 188, 189.* *Fol. 188, 189.* *Fol. 188, 189.*

Sett. 19. However, it is a general uncontested rule, that upon the death of a king in actual possession of the crown, his heir is a king within the act before his coronation;

nation; for without a king to execute the laws, justice must fail; and therefore it is a maxim, that "*the king never dies.*"

Secl. 20. A titular king, as the husband of a queen regnant, seems to be within the words, yet it is clearly not within the meaning of this law; and *à converso* a queen regnant is not within the strict words, and yet she is undoubtedly within the meaning; for by the words "our lord the king" is meant any person invested with regal power, 1. Hale 102, 106. 1. Mar. ft. 3. c. 1. 3. Inst. 8. 4. Comm. 76, 77.

Secl. 21. By 1. Will. & Mary, sess. 2. c. 2. s. 9. "Every person that shall be reconciled to, or hold communion with, the church of Rome, or profess the Popish religion, or marry a Papist, shall be excluded, and be forever incapable to inherit, possess, or enjoy THE CROWN of this realm, &c." and in every such case the people of this realm are absolved from their allegiance, &c.

Secl. 22. As to THE FOURTH POINT, viz. The extent of the clause concerning the king's relations; it is to be observed, *First*, That no queen, or princess dowager, is any way within the purview of it. *Secondly*, That if "the companion" (by which word is meant the wife) of the king or prince consent to an adulterer, she is no less guilty of high treason than he. *Thirdly*, That under the words "their eldest son and heir," the son of a queen regnant is included, and also the second son after the death of the first, and *perhaps* also a collateral heir apparent, especially if he be declared such by parliament (3). Hale 124, &c. Britt. c. 22. 3. Inst. 2. 8. 4. Comm. 81.

(3) A queen divorced *à vinculo matrimonii* is not within this statute, 1. Hale 124. nor is the wife of a king's second son, although her issue would succeed to the throne in preference to the issue of the eldest daughter; neither doth it seem treason to violate the eldest daughter that hath been married, such violation not being within the letter, though within the reason of the statute, Prin. P. L. 124, 125.—The king's eldest daughter, if he has no son, is neither within the words nor the meaning of "the king's eldest son," for a son may possibly be born. It is therefore usual for the legislature to provide for this case, 1. Hale 127. And both *Coke* and *Hale* are of opinion that a collateral heir apparent is not within the statute until he is so declared by parliament, 3. Inst. 9. But a second daughter, the eldest being dead, is within the words "the king's eldest daughter unmarried." 1. Hale 128. Foster's First Discourse.

II. OF HIGH TREASON concerning the levying of war, 1. Hale 131. &c. and adhering to the king's enemies, &c. I shall consider, 141. 150. 153. Foster 208.

FIRST, What acts shall be said to amount to a levying of war against the king.

SECONDLY, What shall be said to be an adherence to the king's enemies,

Secl.

Foster 195.

Sec. 23. As to THE FIRST POINT, it is to be observed, that not only those who directly rebel against the king, and take up arms in order to dethrone him, but also in many other cases, those who in a violent and forcible manner withstand his lawful authority, or endeavour to reform his government, are said to levy war against him; and therefore,

Foster 13, 14.

216, 217, 219.

3. Inst. 16.

B. Treas. 24.

Dalt. c. 89.

1. Hale 49, 139.

146, 296, 164,

169.

Moor 621.

Sec. 24. Those that hold a fort or castle against the king's forces, or keep together armed numbers of men against the king's express command, have been adjudged to levy war against him. But those who join themselves to rebels, &c. for fear of death, and retire as soon as they dare, seem to be no way guilty of this offence (4).

2. And. 5. Kely. 75. 9. St. Tr. 57, 566. Salk. 635.

(4) The apprehension of injury to property either real or personal, of whatever extent, or however enormous or impending it may be, will not extenuate the guilt of this offence; for every arful leader of a rebellion might easily contrive to furnish his followers with this excuse. 8. St. Tr. 56. 4. Comm. 30, 33. The just apprehension of immediate death, derived from a serious force upon the person of the offender, and continued in such a manner throughout the period of subjection, that the traitor cannot attempt an escape with probability of success, is the true and only circumstance that will extinguish the guilt, and avoid the punishment of *constrained* treason. 9. St. Tr. 566.—And this plea has been very strictly construed; for the officer who commanded at the execution of Charles the First, alledged in vain upon his defence, that he had acted by the command of superiors whose power had compelled him to obey. 1. Hale 50. Kely 12. And certainly it is not for private individuals, misguided by ignorance or heated by faction, to determine the proper moment of resistance, Prin. P. L. 131.—But whether force or no force; how long that force continued, with every circumstance tending to shew the practicability of an escape, are facts for the consideration of a jury. Fol. 14. 216.

1. Hale 131.

135, 152, 153.

Moor 621.

C. Car. 583.

489.

Pop. 122.

2. And. 4, 5.

3. Inst. 9.

1. Ven. 250.

Kely. 76.

2. Will. 365.

8. St. Tr. 289.

Foster 209,

210, 211.

Doug. 510.

Sec. 25. Those also who make an insurrection in order to redress a public grievance, whether it be a real or pretended one, and of their own authority attempt with force to redress it, are said to levy war against the king, although they have no direct design against his person, inasmuch as they insolently invade his prerogative, by attempting to do that by private authority which he by public justice ought to do, which manifestly tends to a downright rebellion; as where great numbers by force attempt to remove certain persons from the king; or to lay violent hands on a privy councillor; or to revenge themselves against a magistrate for executing his office; or to bring down the price of victuals; or to reform the law or religion; or to pull down all bawdy-houses; or to remove all inclosures in general, &c. (5). But where a number of men rise to re-

(5) An attempt by intimidation and violence to force the repeal of a law, is a levying of war against the king, and high treason. Lord Mansfield, Doug. 570.

move a grievance to their private interest, as to pull down a particular inclosure intrinching upon their common, &c. they are only rioters.

Sett. 26. In a special verdict, not only those who are expressly found to have been aiding and assisting a rebellious insurrection, but perhaps also those who are only found to have acted in the execution of the intended violence, or to have attended the principal offender from the beginning, though they be not found to have known the design of the rising, shall be adjudged guilty of high treason. But those who are found only to have suddenly joined with them in the streets, and to have flung up their hats and hallooed with them, are guilty of no greater offence than a riot at most.

1. Hale 136, 138.
1. Sid. 358.
3. And. 66.
Pop. 121.
3. Inst. 9.
Kely. 75. 79.
Moor 621.
Ld. Raym. 1585.
1. Black. 47.

Sett. 27. However it is certain, that a bare conspiracy to levy such a war cannot amount to this species of treason, unless it be actually levied. Yet it hath been resolved, that a conspiracy (6) to levy war against the king's person may be alledged as an overt act of compassing his death, and that in all cases if the treason be actually completed, the conspirators, &c. are traitors as much as the actors; and (a) that there may be a levying of war, where there is no actual fighting.

1. Hale 131.
151.
Dalif. 14, 15.
4. St. Tr. 63.
97.
Dyer 98.
Kely. 19, 20.
Post. c. 31.
Het. 65.
3. Inst. 9. 14.

(6) By 13. Eli. and 13. Car. 2. conspiracies to levy war were declared high treason; and several judgments were given upon those statutes; but they both expired with the reigns they were designed to protect. Post. 213.

(a) Salk. 635. 3. Inst. 11. 1. Hale 165. to 169. Sum. 14. 115. Dalif. 89. 224. 2. Ven. 31. 315, 316. 5. Bac. Ab. 117. Prin. P. L. 122. 10. Mod. 322. Foster 211. 213. 342.

Sett. 28. As to THE SECOND POINT, viz. What shall be said to be an adherence to the king's enemies, &c. this is explained by the words subsequent, "giving aid and comfort to them;" from which it appears, that any assistance given to aliens in open hostility against the king, as by surrendering a castle of the king's to them for reward, or selling them arms, &c. or assisting (b) the king's enemies against his allies, or cruising in a ship with enemies to the intent to destroy the king's subjects, is clearly within this branch. But there is no necessity expressly to alledge, that such adherence (c) was against the king, for it is apparent; (7) yet the special manner of adherence must be set forth. And

(b) Salk. 634.
Moor 620.
4. St. Tr. 347.
&c.
(c) 4. St. Tr. 347.
3. Inst. 12, 13.
Salk. 635.
1. Hale 108.
159.
3. Inst. 13, 14.
B. Treas. 24.
Fos. 197. 220.
4. Comm. 82.

(7) Although the solemnity of a previous denunciation of war is not always necessary or expedient, Bynkershoek, p. 1. yet it is necessary to aver, in proceedings on this clause of the act, that the persons adhered to were the king's enemies, 2. Ventris 316. which fact may be evidenced by its public notoriety. Prin. P. L. 136.—Vide 2. & 3. Ann. 2. 20. f. 34.

it is said, that the succouring a rebel fled into another realm is not within the statute, because a "rebel is not properly an enemy," and the statute is taken strictly.

III. As to the branch relating to an *overt act*, there hath been some question concerning what shall be said to be an *overt act*; as to which I shall consider, What *facts* amount to such an overt act? and, Whether any *words* be sufficient?

Fof. 194. 20. *Sett.* 29. I shall take it for granted, that some overt act
1. *Hale* 122. must be alledged in every indictment of high treason, in
4. 6. *St. Tr.* compassing the death of the king, &c. or levying war, or
5. *St. Tr.* 21, adhering to the king's enemies.
22.

10. *Mod.* 322. *Sett.* 30. As to THE FIRST POINT, it seems clearly agreed
3. *Inst.* 14. by all, that conspiring the king's death, and providing
Kely. 20, weapons to effect it, or sending letters to incite others to
procure it, or actually assembling people in order to take
the king into their power, and all other such like notorious
facts, done in pursuance of a treasonable purpose against
the king's person, may be alledged as overt acts to prove
the compassing his death.

(a) *Kely.* 14. *Sett.* 31. It has also been adjudged, that the (a) levying
17. war against the king's person; or the bare (b) consulting to
(b) *Kely.* 20. levy such war; or meeting together and (c) consulting the
3. *St. Tr.* 149. means to destroy the king and his government; or (d) as-
158. 178. 228. sembling with others, and procuring them to attempt the
4. *St. Tr.* 63. king's death; or lifting (e) men in order to depose the king;
79. 207. 277, or (f) printing treasonable positions, as that the king is
278. 282. accountable to the people, and that they ought to take the
Rushw. Straf- government into their own hands, &c. or publishing a book
ford's Trial, to prove that (g) the king's government is antichristian and
684. heretical, &c. may be alledged as overt acts to prove the
(c) *Kely.* 15. compassing the king's death (7).
3. *St. Tr.* 126.
(d) 1. *And.* 106.
(e) 2. *Ven.* 316.
(f) 1. *Kely.* 22. 1. *St. Tr.* 977. 3. *St. Tr.* 228. *Sup. f.* 24. (g) 2. *Roll.* 89, 90.
Fof. 346. 11. *Mod.* 322. 5. *Bac. Ab.* 117. *Prin. P. L.* 123.

(7) Soliciting a prince in amity with the crown to invade the realm, is an overt act of the *intention* to levy war, and may be said as an overt act of compassing the king's death.—And a correspondence designed to enable the enemy to annoy us, or to defend themselves, although intercepted in its first progress at the Post Office, is an overt act of both these species of treason, *Burrow* 646. 10. *State Trials Appen.* 77. for the treason was complete on the part of the agent, though it had not the effect he intended. *Fof.* 217, 218. *Prin. P. L.* 123.

2. *Roll.* 89. *Sett.* 32. As to THE SECOND POINT, *viz.* Whether any
C. *Car.* 125. words are sufficient overt acts? it has been holden, that writ-
See the rever- ten words in a sermon or other writing may amount to overt
fal of the at-
pinder of A. Sidney, 1. *W. & M. St. c.* 7. private acts. 1. *Hale* 118. 3. *St. Tr.* 733.

acts

acts of compassing the king's death, though the same neither actually were, nor ever were intended to be, preached or published. But this opinion seems to be over-severe; for though it be true that *scribere est agere*, yet surely it cannot with any propriety be said, that to write in such a private manner *est aperte agere*, and it seems rigorous to make that amount to a malicious design against the king, which perhaps was only done by way of amusement or diversion (8).

(8) This is Peachum's case. The reporter says, that "many of the judges were of opinion that it was not treason;" it therefore weigheth very little, and no great regard hath been paid to it ever since, Fof. 199.; and if the *dark manner* be considered in which the conviction of this innocent clergyman was procured, still less regard will be paid to it. Foster 199. Vide Bacon's Letters 111. 117. and Hume's Hist.

Secl. 33. But the great question is, Whether words only spoken can amount to an overt act of compassing the king's death? which having been questioned by some great men, and denied by others, I dare not be preumptory concerning it (9).

(9) The intentions of the mind cannot be discovered but through the medium of some plain and unequivocal act; STAMFORD therefore inclines to think, that a compassing "*utere per parolæ*," is not such a sufficient overt act from which an inference of the guilty purpose should be drawn. S. P. C. 2. LORD COKE says, *that without an overt act*, words may make a man a heretic, but cannot make him a traitor, because they are capable of such an endless variety of construction, that few agree in the same opinion concerning them. 3. Inst. 14. 140. LORD HALE expressly says, that bare words are not an overt act of treason. 1. Hale 111. 323. And SIR WILLIAM BLACKSTONE says, it is clearly agreed, that words spoken amount only to a high misdemeanor, and not to treason. 4. Comm. 80. See also Foster's Cro. Law. 200. 202.

Secl. 34. However, it seems agreed that words spoken only in contempt and disgrace of the king, and not directly shewing any purpose to rebel, or any way to hurt his person, or disturb his government, as those which charge him with a personal vice. as drunkenness, &c. or a personal defect, as want of wisdom or steadiness, &c. shall not be so far strained as to be made overt acts of compassing his death, &c.

Secl. 35. Indeed it has been holden, that to affirm that another has a better title than the king is high treason, because it tends to draw people from their allegiance, and to create a mutiny, &c.: but perhaps this may be questioned, because it cannot certainly appear from such words, whether the speaker had a design against the king's person or no. However, there can be no doubt but that such discourses are highly punishable as great misdemeanors, and tending to raise doubts, and to disturb the government.

1. Roll. 185. *Sec. 36.* All the following words have been adjudged high treason: "If king *Henry the Eighth* will not take back his wife, he shall not be king, but shall die."—"If the king will arrest me for high treason, I will stab him."—"If I knew that *Perkin Warbeck* was the son of *Edward the Fourth*, I would take his part against *Henry the Seventh*."

Salk. 631. *Sec. 37.* But however the laws may stand in relation to such conditional words, or to loose words spoken without relation to any act, yet it seems clear that words joined to an act may explain it, and that words of persuasion to kill the king, or manifesting an agreement, or consultation, or directions to that purpose, are sufficient overt acts of compassing his death. And it hath been strongly holden, that any deliberate words which shew a direct purpose against the king's life, as these, "If I meet the king I will kill him," being spoken maturely and advisedly, are sufficient overt acts of compassing or imagining his death (10).
 1. Ven. 315.
 4. St. Tr. 32, 31, 95, 172.
 1. Hale 115, 116.
 1. Roll. 185.
 12. Mod. 72.
 C. Car. 117, 118, 125, 332, 333.
 1. Lev. 57.
 2. St. Tr. 133, 135.
 3. St. Tr. 295, 1001, 1. Keb. 14, 34, 179, 231. Dalt. 223, 224. 3. Mod. 53. Foster 202.
 See the precedents cited C. Car. 118.

(10) It is said, Kelynge 13, that in an indictment for "compassing the king's death" words may be laid as an overt act of that species of treason; yet Croghan's Case, Cro. Car. 333, which he cites as a precedent for this doctrine, is said by Mr. Justice Foster, 203, by no means to warrant the conclusion; because though the words abovementioned were laid in that indictment, yet it further charged, that the speaker actually came into England for the purpose of killing the king. 1. Hale 116. And it has been laid down on more occasions than one, since the Revolution, that loose words, not relative to any act or design, are not overt acts of treason. 4. St. Tr. 581, 645. 1. Black. Rep. 37.

Yelv. 107, 197. *Sec. 38.* And since the compassing or imagining of the king's death is the treason, and words are the most natural means of expressing the imagination of the heart, why should they not be good evidence of it? Besides, it has been often adjudged, that falsely to charge a man with speaking treason is actionable; which could not be if no words could amount to treason, as in the arguments of those cases it is clearly holden that they may, and not so much as made a question.

3. P. C. 2. *Sec. 39.* Besides, it is certain, that before the 25. Edw. 3. words might amount to treason; and it is a general rule, that in doubtful cases the reason of the common law ought to govern the construction of a statute. Also there can be no doubt but that he who by command or persuasion induces another to commit treason, is himself a traitor (for without question by such means he would be accessory to a felony; and it is an uncontroverted rule, that whatever will make

make a man an accessary in felony, will make him a principal in treason; and yet he does no act but by words.

Sett. 40. As to *Sir Edward Coke's* argument from 3. Hen. 7. c. 14. which makes the compassing the king's death, or that of any of his council, &c. by the king's servants, felony; from whence he infers, that in the judgment of this parliament the compassing the king's death by bare words could not be treason before; it may be answered, that this argument extends as well to the king's servants compassing his death by any other act whatever, as to their doing it by bare words; for all are equally within the 3. Hen. 7. and yet none will contend but that the former hath always been treason.

5. Inst. 38.
1. Hale 111.
Foster 201.
in notis.

Sett. 41. As to the argument, that compassing the king's death by bare words cannot amount to treason within 25. Edw. 3. because many late temporary acts of parliament have made it treason, which would be needless if it were so before; it may be answered, that the principal end of those statutes was to make it treason to charge the king with heresy, or schism, or usurpation, or to affirm that it was lawful to take up arms against him, which the Romanists were apt to be guilty of at the beginning of the Reformation; and it may be questioned, whether these be overt acts of high treason within the statute of *Edward the Third*.

Sum. 13.
1. Hale 1115.
115. 323.
3. Inst. 14.
Foster 201.

Vide 2. Roll.
89, 90.

Sett. 42. Indeed it is recited in the preamble of 1. Mary, sess. 1. c. 1. "That the state of every king consists more assuredly in the love of the subjects towards their prince, than in the dread of laws made by rigorous pains; and that laws made for the preservation of the commonwealth without great penalties are more often obeyed and kept, than laws made with extreme punishments. And in special such laws so made whereby not the ignorant but also the learned, minding honesty, are often trapped, yea many times for words only, without other fact or deed done or perpetrated; and thereupon the queen calls to remembrance, that many, as well honourable persons as others of good reputation, had then of late for words only, without other opinion, fact, or deed suffered shameful death, and expresses her pleasure, that the severity of such like extreme dangerous and painful laws shall be abolished." And then follows the enacting clause, "That from thenceforth none act or offence, being by act of parliament or statute made treason, petit treason, or misprision of treason, by words, writing, cyphering, deeds, or otherwise whatsoever, shall be taken, had, deemed, or adjudged to be high treason, petit treason, or misprision of treason, but only such as
" be

“ be declared and expressed to be treason, petit treason, or
 “ misprision of treason, by 25. Edw. 3. nor that any pains
 “ of death, penalty, or forfeiture, in any ways ensue to
 “ any offender for the doing any treason, &c. other than
 “ such as by the said statute of 25. Edw. 3. be ordained;
 “ any statute since the said twenty-fifth year of Edw. 3. or
 “ other declaration to the contrary in any wise notwithstanding.”

Pofter 105.
 1. Hale 111.
 115. 323.

Sett. 43. And it must be confessed, that this statute; *primâ facie*, seems very much to favour the opinion, that no words whatsoever can of themselves amount to overt acts of high treason; inasmuch as one of the principal mischiefs intended to be redressed by it seems to be, that men had often suffered as traitors for words only; yet the force of this objection will be very much lessened, if we consider that the principal purport of the said statute of 1. Mary seems to be, to make the 25. Edw. 3. according to the intention of the makers of it, the only standard of treason; and to abolish all subsequent statutes, which had made many offences treason which were not contained in the said statute of 25. Edw. 3. but no way to extenuate the crimes mentioned in 25. Edw. 3. or to take away the force of any natural exposition thereof; for the first part of the preamble complains of such laws as not only inflicted punishments over-severe for the crimes intended to be restrained by them, but were also penned in such a manner as to be often apt to entrap the wisest by bare words. But surely this can no way be applicable to 25. Edw. 3. inasmuch as no punishments can be thought extreme for the crimes therein restrained; and there can be no danger from that statute of any man's being punished for unwary or innocent words, inasmuch as there is no colour to say that any words as such are punished within that statute, but only the most wicked imagination of the heart, which may be sometimes proved by the evidence of words. And it farther appears from the next part of the preamble of the said statute of 1. Mary, that it has an eye only to such statutes as are above-mentioned, inasmuch as it complains of persons having suffered shameful deaths for words only, without other opinion, fact, or deed, which is very applicable to those many statutes in the time of Henry the Eighth, as 26. Hen. 8. c. 13. and 35. Hen. 8. c. 3. and some others, which made bare words high treason, many of which were so far from purporting a design against the king's life, that they were scarce otherwise criminal than as they were prohibited by those statutes. But surely this can have no relation to 25. Edw. 3. either in punishing a man for such imaginations
 of

2. Shower 411.

of the heart as are most perversely wicked, or in suffering those imaginations to be proved upon him from his own mouth. Also it is farther remarkable, that the enacting clause restrains only such offences as are made high treason by statutes subsequent to 25. Edw. 3. from being adjudged high treason by words, writing, cyphering, &c. and seems to leave the offences contained in the said statute to the same construction which they had before.

Sec. 44. As to the authority of *Sir Edward Coke* in his *(a)* 3. Inst. 5. *Third Institute (a)*, it is of the less weight, because he is said 14. 140. to have been some time of the contrary opinion. 1. Roll. 106.

Sec. 45. Neither does it appear to me, That my lord chief justice *Hale* was at all of this opinion; for though in the latter edition of his treatise of the *Pleas of the Crown (b)* (b) Old Ed. it be said, that compassing by bare words is not an overt act, &c. yet in the first edition published in the year 1678, it is twice said, that it hath been adjudged that words are an overt act (11).

(11) This great question, whether words only spoken can amount to an overt act of compassing the king's death, is examined very much at length, and with great perspicuity, by lord *Hale*, in his *History of the Pleas of the Crown* from p. 111. to 120. and 312. to 322. and by Mr. justice *Foster* from p. 196. to 207. in his discourse on high treason, both of them concluding, against the assertions of *Kelynge* and the doubts of *Hawkins*, that bare words are not overt acts of treason, unless "uttered in contemplation of some traitorous purpose actually on foot, or intended, and in prosecution of such traitorous purpose."

HIGH TREASON concerning the king's office in the administration of justice, is expressed in the words following:

Sec. 46. By 25. Edw. 3. c. 2. "If a man slay the 1. Hale 230.
"chancellor, treasurer, or the king's justices of the one
"bench or the other, justices in eyre, or justices of assize,
"and all other justices assigned to hear and determine, being
"in their places during their offices."

Sec. 47. It hath been holden, that this part of the statute shall not be extended by equity to any other high officers of state beside these expressly named, nor even to these when they are not in actual execution of their offices, nor to any attempt to kill them, nor even to the actual wounding of them unless death ensue; therefore the barons of the exchequer, as such, are not within the protection of this act; neither do the lord keeper or commissioners of the great seal seem to be within it by virtue of the statutes 5. Eliz. c. 18. and 1. W. & M. c. 21. But it is made high treason by 7. Anne c. 21. s. 8. to slay any of the lords of
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cession or justiciary of Scotland, in the exercise of their office.

HIGH TREASON relating to the king's seal,

3. Inst. 15.
5. P. C. 2, 3.
1. Hale 170.
187.

Stat. 48. Is said to have been high treason at the common law, and by 25. Edw. 3. c. 2. is expressed in the following words: "And if a man counterfeit the king's great or privy seal."

Kely 80.
4. Comm. 83.

Stat. 49. It hath been holden, that these words extend to the aiders and consenters to such counterfeiting, as well as to the actors.

Sum. 18.

Stat. 50. But not to an intent or compassing to do it, if it be not actually done.

Con. Dalt.
c. 89.

Stat. 51. Nor to the fixing of the great seal to a patent without a warrant for so doing.

Kely 80.
3. Inst. 15.
12. Co. 15, 16.
2. Keb. 74.
B. Treas. 3, 17.
48.

Stat. 52. Nor to the razing of the name of one manor out of a patent and putting in that of another, nor to any artificial removing of the true writing, and adding matter altogether new: nor, by the better opinion, to the taking off the wax impressed with the great seal from a true patent, and fixing it to a writing purporting a grant from the king.

1. Roll. 30, 51.
2. Roll. 50.

Stat. 53. Nor to the counterfeiting of the sign manual, or privy signet. But this is made high treason by the first of Mary, ft. 2. chapter the sixth.

† And by 7. Ann. c. 21. s. 9. to counterfeit the seals used and continued in *Scotland* according to the twenty-fourth article of the union, is high treason.

To counterfeit the king's money is high treason.

HIGH TREASON respecting the *coin* is either with respect to counterfeiting the king's coin, or with respect to bringing false money into the realm.

Stat. 54. As to the FIRST BRANCH, of counterfeiting, it is declared by 25. Edw. 3. c. 2. "That if a man counterfeit the king's money he shall be guilty of high treason."

1. Hale 213.
214, 229.
B. Treas. 27.
Sum. 19, 20.
127.
3. Inst. 16.
Con. 6. H. 7, 13.

Stat. 55. As to what degree of counterfeiting will amount to high treason, it is said, that those who coin money without the king's authority, are guilty of high treason within this act, whether they utter it or not; and that those who have the king's authority to coin money, are guilty of high treason, if they make it of baser alloy than they ought; and that

that ~~those~~ also are guilty of the same crime, who receive and comfort one who is known by them to be guilty thereof; but that *clippers, &c.* are not within this statute. (13) *Brit. f. 10.*
Fleta. 1. c. 22. Kely. 33. Con. Dyer 296. & 213.1. Hale 233. (13) But see post. f. 61. and 62.

† It has been held, that to counterfeit the impress of Varley's Cafe, a half-guinea on a piece of gold previously hammered, not round, and in a state not passable, is not high treason, for the crime is incomplete. *2. Black. 632.*

Seft. 56. But it seems that those who barely utter false money made within the realm, knowing it to be false, are neither guilty of high treason, nor of a misprision thereof, but only of a high misprision. *3. H. 7. 10. Sum. 128. B. Treas. 19. 1. Hale 214. 373. 375.*
 But by 8. & 9. Wil. 3. c. 26. they are in some cases made guilty of felony, for which see the next chapter.

Seft. 57. As to what shall be said to be the king's money, it seems, that such only as is coined by the king's authority either in gold or silver within the realm, and consequently not *brass farthings, &c. (a)* shall come under this denomination. *2. Inst. 577. 3. Inst. 17. 2. Keb. 36. Dalt. c. 89. 1. Hale 195. 192. 210. to 107. (a) But*
213. 1. Burn 359. 1. Comm. 278. Foster 227. 12. Mod. 10. Co. Lit. see ch. 18. f. 5.

Seft. 58. But the mischiefs intended to be remedied by this statute, having been found by experience not to have been sufficiently redressed by it, as thus restrained, the same have been farther provided for by subsequent statutes.

Seft. 59. For by 1. Mary, sess. 2. c. 6. "If any person or persons falsely forge and counterfeit any such kind of coin of gold or silver as is not the proper coin of this realm, and is or shall be current within this realm by the consent of the crown, they and their counsellors, procurers, aiders, and abettors, shall be guilty of high treason." *To counterfeit the current coin is high treason. 1. Hale 197. T. Jones 233.*

Seft. 60. And by 14. Eliz. c. 3. "If any person or persons falsely forge or counterfeit any such kind of coin of gold or silver as is not the proper coin of this realm, nor permitted to be current within this realm, they and their procurers, aiders, and abettors, shall be guilty of misprision of treason." *To counterfeit money neither proper nor current is misprision. 3. Inst. 17. 1. Hale 376.*

Seft. 61. And it is enacted by 5. Eliz. c. 11. f. 2. "That clipping, washing, rounding or filing, for wicked lucre or gain sake, of any the proper monies or coins of this realm, or the dominions thereof,—or of the monies or coins of any other realm allowed and suffered to be current within this realm or the dominions thereof, at this present, or that hereafter at any time shall be the lawful monies or coins of *To clip, wash, round or file any of the proper or current coin of the realm is high treason.* "this

Dyer 230.

“ this realm, or of the dominions thereof, or of any other
 “ realm, and by proclamation allowed and suffered to be
 “ current here by the crown, or counselling consenting and
 “ aiding therein, shall be deemed to be treason. And the
 “ offenders therein, their counsellors, consenters, and aid-
 “ ers, shall be adjudged as offenders in treason, and being
 “ lawfully convicted or attainted shall lose and forfeit all
 “ his goods and chattels, and all his lands and tenements
 “ during his natural life.” But no corruption of blood or
 loss of dower.

To impair,
 scale, or
 lighten any of
 the proper or
 current coin is
 treason.

1. Hale 221.
 328.

Stat. 62. And by the 18. Eliz. c. 1. “ If any person
 “ or persons shall for wicked lucre or gain fake, by any art,
 “ ways, or means whatsoever, impair, diminish, falsify,
 “ scale or lighten the proper monies or coins of this realm,
 “ or any the dominions thereof—or the monies or coins of
 “ any other realms allowed and suffered to be current at the
 “ time of the offence committed within England or any the
 “ dominions of the same by the proclamation of the crown,
 “ their counsellors, consenters, and aiders shall be adjudged
 “ offenders in high treason, and lose and forfeit all their
 “ goods and chattels absolutely, and all their lands, tene-
 “ ments and hereditaments during his or their natural lives
 “ only:” But no corruption of blood or loss of dower.

To make or
 mend any
 puncheon,
 counter-pun-
 cheon, &c.
 which will
 make or im-
 press the simi-
 litude of the
 current coin,
 is HIGH
 TREASON.

+ Stat. 63. By 8. & 9. Will. 3. c. 26. made perpetual
 by 7. Ann. c. 25. it is enacted “ That no smith, engraver,
 “ founder, or other person or persons whatsoever (other
 “ than and except the persons employed in or for his majes-
 “ ty’s mint or mints in the Tower of London, or elsewhere,
 “ and for the use and service of the said mints only, or per-
 “ sons lawfully authorized by the lords commissioners of the
 “ treasury, or lord high treasurer of England for the time
 “ being) shall knowingly make or mend, or begin, or pro-
 “ ceed to make or mend, or assist in the making or mending
 “ of any puncheon, counter-puncheon, matrix, stamp,
 “ dye, pattern, or mould of steel, iron, silver, or other me-
 “ tal or metals, or of spaud or fine founder’s earth, or
 “ sand, or of any other materials whatsoever in and upon
 “ which there shall be, or be made or impressed, or which
 “ will make or impress, the figure, stamp, resemblance, or
 “ similitude of both or either of the sides or flats of any gold
 “ or silver coin current within this kingdom, on pain that
 “ every such offender and offenders, their counsellors, pro-
 “ curers, aiders, and abettors, shall be guilty of HIGH
 TREASON.” But no attainder under this act shall work any
 corruption of blood (2), or create any loss of dower, and
 the prosecution must be commenced within three months af-
 ter the offence committed.

(2) But see
 the case of Sir
 J. Lovel, 1.
 alk. 85.

+ Stat.

† *Sec.* 64. It is said, that in an indictment on this statute, every thing necessary to shew that the defendant is not within the exceptions must be negatively averred (*a*) ; and the most approved precedents are certainly in that form (*b*) ; but it is not necessary for the prosecutor strictly to prove these negative facts (*c*), for it is incumbent on the defendant to prove the affirmative (*d*).

215. (*c*) Willis' Case, October Session, 1791. (*d*) 2. Burr. 1036.

† *Sec.* 65. It has been resolved, that an indictment charging the offender on this branch of the statute with mending a mould, " in and upon which was made and impressed the figure, resemblance, and similitude of one of the sides, *to wit*, the head side of the lawful silver current coin of the kingdom called a shilling, &c." is sufficiently supported by evidence of mending a mould, which has only the resemblance of a *shilling* inverted, *viz.* the convex parts of the shilling being concave in the mould ; the head or profile being turned the contrary way of the coin ; and all the letters of the inscription reversed ; for although this is an instrument which would rather *make and impress* the resemblance of the current coin than an instrument on which the same is *made and impressed* ; yet as the *convexities* of the current coin form the *concavities* of the mould (*e*), it is an instrument on which there is *made and impressed the stamp* of one of the sides of the silver coin. But it seems to be agreed, that it would be more accurate to describe it as a mould that would *make and impress* the similitude, &c. ; for the statute clearly distinguishes between such as will *make and impress* the similitude, &c. as " matrix, die, and " mould," and such on which the same may be *made and impressed*, as a puncheon, counter-puncheon, or pattern.

(*a*) *Rex v. Jarvice*, 1. Burr. 148. *Rex v. Pemberton*, 2. Burr. 1037. Add. P. L. 149. (*b*) *Cro. Car. Comp.* 6. Edit. 87. See form of indictment, *Cro. Cir. Ass.* 48.

(*e*) See *Ridgeway's Case*, *Cases in Crown Law*, 2. Edit. 174, for the difference between the *puncheon* and *counter-puncheon*.

† *Sec.* 66. But it has been doubted (*f*), whether an iron stamp which will make and impress only part of one side of the current coin, as one of the *sculptures* on a half-guinea, is HIGH TREASON within this act (*g*).

H. 371. (*g*) This is now provided for by 15. Geo. 2. c. 28. See post. sect. 82.

† *Sec.* 67. It has also been resolved, that an instrument on which there is the outline only of the profile on the current coin, and no marginal letters, is a *puncheon* within the meaning of this act ; although such an instrument may be used for other purposes, as making seals, buttons, medals, and other things of the like nature ; for it is sufficiently complicit to make an old shilling or a base shilling current.

(*f*) By Lord Hardwicke in *Button's Case*, *Butt.* 15. *Geo.* 2. B. R. post. sect. 82.

Rowland Ridgeway's Case, *Cases in Crown Law*, 2. Edit. 174.

To make or mend any tool or instrument for graving money round the edges like the current coin, is HIGH TREASON.

+ *Stat.* 68. By 8. & 9. Will. 3. c. 26. f. 1. it is further enacted, "That no smith, engraver, founder, or other person whatsoever (other than and except the persons employed in the mint, &c. &c.), shall knowingly make or mend, or begin or proceed to make or mend, or assist in the making or mending of any edger or edging tool, instrument, or engine, not of common use in any trade, but contrived for marking of money round the edges with letters, grainings, or other marks or figures resembling those on the edges of money coined in his majesty's mint; nor any press for coinage; nor any cutting engine for cutting round blanks, by force of a screw, out of flatted bars of gold, silver, or other metal; on pain that every such offender or offenders their counsellors, procurers, aiders, and abettors, shall be guilty of HIGH TREASON." But no attainder under this act shall work any corruption of blood, or loss of dower.—And by 7. Ann, c. 25. f. 2. "The prosecution for making or mending, or beginning or proceeding to make or mend any coining tool or instrument herein prohibited, or by marking of money round the edges with letters or grainings, may be commenced at any time within *six months* after such offence committed."

Case of John Bell, Foster's Crown Law, 3. Edit. p. 420.

† *Stat.* 69. It has been determined by a majority of the judges, that a *press* of the same sort as that which is used in the mint for coinage, and proper to be made use of for coining guineas, shillings, and *louis-d'ors*, or any other less pieces, but not large enough for coining crowns or half-crowns, and which is proper to be made use of for making medals, dial-plates for watches, buttons, and several other things, and is like those presses in many tradesmen's shops for the purpose of making watch keys, watch chains, cane heads, &c. is not a tool or instrument the making or mending of which will amount to HIGH TREASON, if it clearly appear that the person in whose custody it is found intended to make use of it only in coining *louis-d'ors*, and not any of the current coin of this kingdom.

To hide, conceal, or have in custody, any coining tool or instrument, is HIGH TREASON.

+ *Stat.* 70. By 8. & 9. Will. 3. c. 26. f. 6. "No smith, engraver, founder, or other person or persons whatsoever (other than and except the persons employed in the mint, and for the use and service of the mint, or persons lawfully authorised by the commissioners of the treasury, or lord high treasurer for the time being), shall knowingly buy or sell, hide or conceal, or without lawful authority, or sufficient excuse for that purpose, knowingly have in his, her, or their house, custody, or possession, any such punchcon, counter-punchcon, matrix, stamp,

"stamp, dye, edger, cutting engine, or other tool or instrument before mentioned, on pain that any such offenders or offenders, their counsellors, procurers, aiders, and abettors, shall be adjudged guilty of HIGH TREASON." But no attainder under this act shall work any corruption of blood, or loss of dower; and the prosecution must be commenced within *three months* after such offence committed.

† *Sec. 71.* It is observable, that the words "*pattern*" and "*mould*" are expressly mentioned among the articles enumerated in the first section of this act (*a*), but that they are omitted in this clause of it. It has, however, been determined (*b*), that a person may be indicted under this clause of the act for having feloniously and traitorously in his custody and possession a *mould* made of lead, on which is made and impressed the figure of the current coin; for that a *mould* is comprised under the general words of this clause, "other tool or instrument;" and therefore having the custody thereof without lawful authority or excuse, will amount to the crime of HIGH TREASON.

(*a*) Ante, sect. 63.
(*b*) *Rex v. Lennard*, 2. Bl. Rep. 807.

† *Sec. 72.* It has also been determined, that as a *mould* is expressly mentioned by name in the first clause of the statute, with respect to the making or mending, an indictment for having the possession of a *mould* is good, without averting it to be "a tool or instrument" within this clause of the act.

Rex v. Lennard, 2. Bl. Rep. 809.

† *Sec. 73.* It has also been determined, that "a press for coinage" being mentioned among the tools and instruments enumerated in the first clause of the statute, is also within this clause of the statute "other tool or instrument."

The Case of John Bell, Foster's Crown Law, 3. Edit. p. 430.

† *Sec. 74.* It has also been determined, that if a press of the same sort as those used in the mint, and proper to be made use of in coining guineas, shillings, and *louis-d'ors*, or other less pieces, but not large enough for coining crowns or half-crowns, be found in the possession of a person, his intending to make use of it only in coining *louis-d'ors*, and not the current coin of the kingdom, is "a sufficient excuse" for his having such a press in his custody.

Case of John Bell, Foster's Crown Law, 3. Edit. 430.

† *Sec. 75.* It is said, that it is the *intent* with which the person has these instruments in his custody that creates the *offence*, and therefore it has been determined, that a person having in his possession two iron stamps, with intent to impress the sceptres on sixpences, and to colour and pass them

Rex v. Sutton, 2. Stra. 1074.
B. R. H. 379.

off for half-guineas, is indictable as a misdemeanour at common law.

To convey any tool or instrument out of the king's mint, which is there used for the purpose of coining, is HIGH TREASON.

† *Sec. 76.* By 8. & 9. Will. 3. c. 26. f. 2. " If any person or persons whatsoever shall, without lawful authority for that purpose, willingly or knowingly convey, or assist in conveying out of his majesty's mint, any puncheon, counter-puncheon, matrix, dye, stamp, edger, cutting engine, press, or other tool, engine, or instrument, used for or about the coining of monies there, or any useful parts of such tools or instruments, the said person and persons so offending, their counsellors, procurers, aiders, or abettors, as also all and every person and persons knowingly receiving, hiding, or concealing the same, shall be adjudged guilty of HIGH TREASON." But no attainder under this act shall work corruption of blood or loss of dower; and the prosecution must be commenced within *three months* after the offence committed.

To mark the edges of the diminished coin, or any counterfeit coin, with letters or grainings, &c. is HIGH TREASON.

† *Sec. 77.* By 8. & 9. Will. 3. c. 26. f. 3. " If any person or persons (other than the persons employed in his majesty's mint or mints, or such as have authority from the commissioners of the treasury, or the lord high treasurer for the time being), shall mark on the edges any the current coin of this kingdom; or if any person or persons whatsoever shall mark on the edges of any of the diminished coin of this kingdom, or any counterfeit coin resembling the coin of this kingdom, with letters or grainings, or other marks or figures like unto those on the edges of money coined in his majesty's mint, every such offender, his counsellors, procurers, aiders, and abettors, shall be adjudged guilty of HIGH TREASON." But no attainder shall work corruption of blood or loss of dower; and the prosecution must be commenced within *three months* after the offence committed.

To colour, gild, or wash any metal so as to make it resemble the current coin, is HIGH TREASON.

† *Sec. 78.* By 8. & 9. Will. 3. c. 26. f. 4. " If any person or persons whatsoever shall colour, gild, or wash over with gold or silver, or with any wash or materials producing the colour of gold or silver, any coin resembling any the current coin of this kingdom, or any round blanks of base metal, or of coarse gold or coarse silver, of a fit size and figure to be coined into counterfeit milled money, resembling any the gold or silver coin of this kingdom; or if any person or persons shall gild over any silver blanks of a fit size and figure to be coined into pieces resembling the current gold coin of this kingdom, all and every such person and persons so offending, their counsellors, procurers, aiders, and abettors,

"tors, shall be guilty of HIGH TREASON." But no attainder for this offence shall work corruption of blood, or loss of dower; and the prosecution must be commenced within *three months* after the offence committed.

† *Stat.* 79. It has been resolved, that if the colour of silver be produced by melting a small portion of good silver with a large portion of base metal, and throwing it, after it has been cut into round blanks, into *aqua fortis*, and thereby drawing to the surface whatever silver there is in the composition, and making it assume the colour and appearance of real silver, is "a colouring with a wash and materials" within the meaning of the statute.

Rex v. Lacy
and Parker,
Cases Cro.
Law, 2. Edit.
140.

† *Stat.* 80. It seems also that a count on this clause of the statute, and a count on the statute 25. Edw. 3. c. 2. (a) ought not to be introduced into the same indictment.

Harris and
Minion's Case,
Cases in Cro.
Law, 126.
(a) Ante, § 54.

† *Stat.* 81. It is said, that the money thus counterfeited must resemble the true and lawful coin; but it has been determined, that a counterfeit shilling or sixpence, although they are quite smooth, and no impression of any sort or kind discernible upon the surface of them, are sufficiently resembling the silver coin of this kingdom to make the offender guilty within the meaning of the act (b).

5. Bac. Abr.
129.
1. Hale § 84.
215.

(b) Welch's
Case, Cases
Cro. Law, 293.

† *Stat.* 82. By the 15. Geo. 2. c. 28. "If any person whatsoever shall wash, gild, or colour, any of the lawful silver coin called a *shilling* or a *sixpence*, or any counterfeit or false shilling or sixpence; or add to or alter the impression, or any part of the impression, of either side of such lawful or counterfeit shilling or sixpence, with intent to make such shilling resemble or look like or pass for a piece of lawful gold coin called a *guinea*, or with intent to make such sixpence resemble or look like or pass for a piece of lawful gold coin called a *half-guinea*, the person or persons so offending in any of the matters aforesaid, their counsellors, aiders, abettors, and procurers, shall be adjudged to be guilty of HIGH TREASON." But the blood of the heirs of such offenders shall not be thereby corrupted, nor shall his wife thereby forfeit or lose her dower.

To alter a *shilling* or a *sixpence*, whether legal or counterfeited, with intent to make the shilling resemble a guinea, or the sixpence a half-guinea, is HIGH TREASON.

† *Stat.* 83. By 15. Geo. 2. c. 28. § 1. "If any person whatsoever shall file, or any wise alter, wash, or colour any of the brass monies called *halfpennies* or *farthings*, or add to or alter the impression or any part of the impression pass for a *shilling*, or the farthing pass for a *sixpence*, is HIGH TREASON.

To alter a *halfpenny* or a *farthing*, with intent to make the halfpenny

“ of either side of an halfpenny or farthing, with intent to
 “ make an halfpenny resemble or look like or pass for a law-
 “ ful shilling; or with intent to make a farthing resemble or
 “ look like or pass for a lawful sixpence; the person or per-
 “ sons so offending in any of the matters aforesaid, their
 “ counsellors, aiders, abettors, and procurers, shall be ad-
 “ judged guilty of HIGH TREASON.” But the blood of the
 heirs of such offenders shall not be thereby corrupted, nor
 shall his wife thereby forfeit or lose her dower.

Sec. 84. AS TO THE SECOND BRANCH, concerning the
 bringing false money into the realm, the following parti-
 culars are observable.

1. Hale 225.
 228, 229, 317.
 Sum. 21.
 S. P. C. 3.
 Foster 227.

Sec. 85. FIRST, That the money so brought must be
 counterfeited according to the similitude of English mo-
 ney. But by 1. & 2. Phil. & Mar. c. 11. it is made high
 treason “ to bring into the realm money counterfeited ac-
 “ cording to the similitude of foreign coin current here, to
 “ the intent to merchandize therewith.”

Sec. 86. SECONDLY, That it must be brought by one
 who knows it to be false.

1. Hale 225,
 226, 317.
 3. H. 7. 10.
 S. P. C. 3.
 3. Inst. 18.
 Sum. 12.
 B. Treas. 10.
 Dalt. 89. f. 225.

Sec. 87. THIRDLY, That it must be brought from a
 foreign nation, and not from *Ireland*, or other place sub-
 ject to the crown of *England*; for though to some purposes
 they be distinct from the realm of *England*, and conse-
 quently money brought from thence may, within the letter
 of the statute, be said to be brought into the realm, yet in-
 asmuch as the counterfeiting is punishable there by the
 laws of our king, as much as in *England*, the bringing
 money from such places has been construed to be no more
 within the act than if they were actually in *England*.

Sum. 21.
 3. Inst. 18. ch.
 18. f. 4.

Sec. 88. FOURTHLY, That the bare uttering of such
 money here, by one who brought it not over, is not with-
 in this branch. But by force of an ancient statute, if false
 money be found in the hands of a suspicious person, he
 may be arrested till he have found his warrant.

Sum. 21.

Sec. 89. FIFTHLY, That it is not necessary that such
 false money be actually paid away or merchandized withal,
 for the words are, “ to merchandize or make payment, &c.”
 which only import an *intention* to do so, and are fully satis-
 fied whether the act intended be performed or not. But
quære, because both *Coke* (a) and *Hale* (b) seem to hold
 otherwise. However it is clear, that bringing over money
 coun-

(a) 3. Inst. 18.
 (b) 1. Hale 229.

counted according to the similitude of foreign coin is treason within 1. & 2. Phil. & Mar. c. 11.

Stat. 90. Also in the said statute of 25. Edw. 3. c. 2. there is this clause, "And because that many other like cases of treason may happen in time to come which a man cannot think nor declare at this present time, it is accorded, that if any other case supposed treason, which is not above specified, doth happen before any justices, the justices shall tarry without any going to judgment of the treason, till the cause be shewed and declared before the king and his parliament, whether it ought to be judged treason or other felony."

Stat. 91. By virtue of this clause, many offences which are not high treason within this statute, as the murder of an ambassador, &c. were declared by the parliament to be high treason. But these and all other such like declarations are made void by 1. Mary c. 1. And it seems that the parliament have no such power at this day by virtue of the said clause, inasmuch as the said statute of 1. Mary expressly enacts, "That no offence shall be deemed high treason, but only such as is declared and expressed to be so by 25. Edw. 3." and takes no notice of the said clause relating to the parliament.

1. Hale 308.
3. Inst. 8.
12. Co. 16.

And now we are come to offences which, besides those already mentioned respecting THE COIN, which have been made HIGH TREASON since the said statute of 1. Mary, viz.

I. Offences in upholding or favouring the power of the pope.—II. Offences against the Protestant succession.—III. Offences of corresponding with rebels or enemies.

I. Offences in upholding or favouring the power of the pope seem reducible to the following heads: FIRST, Extolling the pope's power. SECONDLY, Putting in ure Popish bulls. THIRDLY, Perverting others, or being perverted to Popery. FOURTHLY, Receiving Popish orders or education in Popish seminaries, and not submitting, &c. FIFTHLY, Refusing a second tender of the oaths.

And FIRST, The offence of extolling the pope's power.

Stat. 92. By 5. Eliz. c. 1. s. 2. 10. it is enacted, "That if any person within the queen's dominions shall by writing, cyphering, printing, preaching, or teaching authority of the See of Rome, is HIGH TREASON. 1. Hale 331, 332. Prin. P.L. 144. To maintain by advice, writing, or speaking, the

" deed

“ deed or act, advisedly and wittingly hold or stay'd with
 “ to extol, set forth, maintain, or defend the authority,
 “ jurisdiction, or power of the bishop of Rome, or of his
 “ see, heretofore claimed in this realm, or by any speech,
 “ open deed or act, advisedly or wittingly attribute any
 “ such authority or pre-eminence to the see of Rome, he
 “ shall be guilty of a *præmunire* by the first offence, and of
 “ HIGH TREASON by the second; but without corruption
 “ of blood or loss of dower.”

Dyer 282.
 Jenk. Cent. 4.
 c. 29.
 9. Co. 59.
 7. Co. 1.
 2. Keb. 522.

Stat. 93. It has been holden, That he who, knowing the effect of a book written beyond sea, brings it over and secretly tells it; and also, That he who, by report hearing the contents thereof, commends it; and also, That he who, knowing its contents, secretly conveys it to a friend, with an intent to pervert him, is in danger of the statute: and it has been resolved, That he who, having read the book, does afterwards, in discoursing of it, allow it to be good; and also, That whoever writes or prints such a book, and after publishes it, is clearly guilty: but it is said, That he who, having heard of the contents, barely buys and reads the book, is not within the statute.

Two of the
 judges dissent-
 ed from this
 opinion, Sav.
 46.

Stat. 94. It has also been holden, That if one who is convicted and condemned for an offence of this nature, being afterwards demanded by the judges, whether he be still of the same opinion? answer that he is, he is guilty of high treason, as having advisedly maintained the pope's power a second time.

SECONDLY, The offence of putting in ure a Popish bull.

To put in ure
 any bull or in-
 strument of
 absolution, is
 misprision of
 TREASON.

Prin.P.L. 144.

Stat. 95. By 13. Eliz. c. 2. s. 2, 3. “ If any within the
 “ queen's dominions shall put in ure any bull or instru-
 “ ment of absolution or reconciliation obtained from the
 “ see of Rome, or shall take upon him by colour thereof
 “ to absolve or reconcile any person, or to grant or pro-
 “ mise any absolution or reconciliation, or shall willingly
 “ receive any such absolution or reconciliation, or shall
 “ obtain from the see of Rome any bull or writing what-
 “ soever, or publish, or any ways put the same in ure, he
 “ is guilty of high treason. And by s. 4. accessories after
 “ the offence incur a *præmunire*. And by s. 5, 6. Those
 “ who within six weeks disclose not an offer of such bulls,
 “ &c. to some privy counsellor, &c. are guilty of a mis-
 “ prision of treason.”

THIRDLY, The offence of perverting others, or being perverted to Popery.

Stat.

Señ. 96. By 23. Eliz. c. 1. f. 2. & 3. Jac. 1. c. 4. f. 22, 23. it is enacted, "That if any one shall pretend to have power, or shall by any ways or means put in practice to withdraw a subject from his natural obedience to the king, or to withdraw them for that intent to the Romish religion, or to move to promise any obedience to any foreign power, or to do any overt act to that intent, or to reconcile one to the *see of Rome*; and if any person shall by any means be willingly withdrawn, or promise obedience as aforesaid; he is guilty of HIGH TREASON." To be reconciled, or to endeavour to reconcile others to the *see of Rome*, is HIGH TREASON. 1. Hale 337, 338. 11. Mod. 56. 114. Rex v. Bolton, Mich. 26. G. 3. Cro. Cir. 573.

Form of indictment,

Señ. 97. But by 3. Jac. 1. c. 4. "If any person who is reconciled to the *see of Rome* beyond the seas, return into the realm and submit himself, &c. and take the oaths within six days after his return, he is excused." Cawley 187.

Señ. 98. It seemeth that the bare pretending to such a power, without any farther act in endeavouring to persuade persons from their allegiance, or the bare endeavouring so to persuade them, without any pretence of such a power, is high treason within these acts. The case of Campion the Jesuit and others, Savil 3.

FOURTHLY, The offence of receiving Popish orders or education, &c.

Señ. 99. By 27. Eliz. c. 2. f. 3. "If any ecclesiastick born in the queen's dominions, and ordained or professed by Popish authority, shall remain in the queen's dominions, or come from beyond sea, and not submit to some bishop or justice of peace within three days, and take the oaths, &c. he shall be guilty of HIGH TREASON." Popish priests not taking the oaths are guilty of HIGH TREASON. Hale 336, 337.

Señ. 100. By 27. Eliz. c. 2. f. 15. "If any subject, not being an ecclesiastick, shall not return from a Popish seminary within six months after a proclamation to that purpose in London, and submit, &c. within two days, he shall be guilty of HIGH TREASON whenever he shall otherwise return."

Señ. 101. By 27. Eliz. c. 2. f. 13. "If any subject shall know that any such priest is within the realm, and not discover him to some justice of peace, &c. within twelve days, he shall be fined and imprisoned at the queen's will; and if any justice of peace, &c. to whom such matter shall be discovered, shall not give information to some of the privy council, &c. within twenty-eight days, he shall forfeit two hundred marks."

In the construction of this statute it hath been resolved,

Southwell's
Case, Pop. 49.

Señ. 102. First, That in an indictment grounded on this statute against a priest remaining here beyond the time limited by the statute, it must be alledged, that he was born in the realm, &c. and also that he was ordained, &c. by authority challenged or pretended from the *see of Rome*; but that there is no need to shew in what place in particular he was born, or whether he were ordained within the realm, or beyond sea.

Rex v. O'Cul-
len, Ray 377.

Señ. 103. Secondly, That one in Popish orders, being in a ship in order to go to *Ireland*, and driven by a storm into *England*, and immediately apprehended, is not guilty of high treason within this act; for his design of going to *Ireland* was prevented, *et nil efficit conatus, nisi sequatur effectus*, and he was forced into *England* by the act of God, and against his will; neither can he be said to remain here within the intent of the statute, because he was compelled to it by reason of the prosecution.

FIFTHLY, The offence of refusing a second tender of the oaths.

Persons saying
or hearing
private mass,
and refusing
the oaths, guilt-
ty of TREAS-
ON.
Vide infra,
c. 19.
Sec 1. IV. &
M. c. 8.

Señ. 104. By 5. Eliz. c. 1. f. 11, 12. & 20. "If any person who shall have a charge, cure, or office in the church, or an office or ministry in an ecclesiastical court, or if any person who shall wilfully refuse to observe the rites of the church of England, after having been admonished by the ordinary, &c. or that shall say or hear private mass, &c. shall refuse a second tender of the oaths, he shall be guilty of high treason, but without corruption of blood."

11. OFFENCES against the Protestant succession.

Every person
who shall be
reconciled to,
or hold com-
munication
with the see
of Rome, or
who shall pro-
fess Popery,
or marry a Pa-
pist, is ex-
cluded from
ascending
THE THRONE
hands of the

† *Señ. 105. By THE BILL OF RIGHTS, the 1. Will. & Mary, ft. 2. c. 2. f. 9. it is recited, That it had been found by experience inconsistent with the safety and welfare of this Protestant kingdom to be governed by a Popish prince, or by any KING or QUEEN marrying a Papist; AND ENACTED, "That all and every person and persons that is, are, or shall be reconciled to, or shall hold communion with the see or church of Rome, or shall profess the Popish religion, or shall marry a Papist, shall be excluded, and be for ever incapable to inherit, possess, or enjoy THE CROWN and government of this realm and of Great Britain; and THE SCEPTRE shall, in such case, pass into the next Protestant successor."*

Ireland,

“ *Ireland*, and the dominions thereunto belonging, or any
 “ part of the same; and in all and every such case or cases,
 “ THE PEOPLE of these realms shall be and are hereby ab-
 “ solved of their allegiance; and the said CROWN and go-
 “ vernment shall, from time to time, descend to and be
 “ enjoyed by such person or persons, being *Protestants*, as
 “ should have inherited and enjoyed the same, in case the
 “ person or persons so reconciled, holding communion,
 “ or professing or marrying as aforesaid, were naturally
 “ dead.”

† *Stat.* 106. By THE ACT OF SETTLEMENT, the 12. The crown of
 & 13. Will. 3. c. 2. the princess *Sophia*, electress and duchess England li-
 dowager of *Hanover*, daughter of *Elizabeth*, late queen of mited to the
Bohemia, who was daughter of KING JAMES THE FIRST, is *Protestant suc-*
 declared to be next in succession in the *Protestant line* to cessors of SO-
 the crown of Great Britain, after death of *his Majesty* and PHIA, the
 the princess *Anne* of *Denmark*, without issue. “ PROVIDED daughter of
 “ ALWAYS, that all and every person and persons who James the
 “ shall or may take or inherit the said crown by virtue of First, after the
 “ the limitation of this present act, and is, are, or shall death of KING
 “ be reconciled to or hold communion with the see WILLIAM
 “ or church of Rome, or shall profess the Popish religion, and QUEEN
 “ or shall marry a Papist, shall be subject to such inca- ANNE.
 “ pacities as in the said BILL OF RIGHTS are provided,
 “ enacted, and established.”

Stat. 107. By 1. Ann. st. 2. c. 17. s. 3. “ If any per- Maliciously,
 “ son or persons shall endeavour to deprive or hinder any advisedly, and
 “ person who shall be the next in succession to THE CROWN directly to at-
 “ for the time being, according to the limitations of the tempt, by overt
 “ ACT OF SETTLEMENT, and according to the BILL OF act, to hinder
 “ RIGHTS, from succeeding to the imperial crown of this the *Protestant*
 “ realm, and the dominion and territories thereto belong- succession, is
 “ ing, according to the limitations in the two before-men- high treason.
 “ tioned acts, and the same maliciously, advisedly, and di-
 “ rectly shall attempt by an overt act or deed, every such
 “ offence shall be adjudged HIGH TREASON.

Stat. 108. By 6. Ann. c. 7. s. 7. “ If any person or To maintain
 “ persons shall maliciously, advisedly, and directly, by or affirm by
 “ writing or printing, maintain and affirm that THE KING writing or
 “ that now is is not the lawful and rightful KING of these printing that
 “ realms, or that THE PRETENDED prince of Wales, or THE KING is
 “ any other person or persons, hath or have any right or not the right-
 “ title to the same, otherwise than according to THE BILL ful monarch,
 “ OF RIGHTS, and the ACT OF SETTLEMENT, and the or that parlia-
 “ ACT OF UNION; or that the KINGS or QUEENS of this ment cannot
 “ realm, with and by the authority of parliament, are not limit the de-
 “ able scendent of the
 “ crown, is high
 “ treason.”

See the case of J. Mathews, 9. St. Tr. 15. O. B. Oct. Sep. 1719. “able to make laws and statutes of sufficient force and validity to limit and bind THE CROWN, and the descent, limitation, inheritance, and government thereof, “any such person or persons shall be guilty of HIGH TREASON (a).

(a) See post. ch. 19. §. that directly to affirm the same by preaching, teaching, or advised speaking, is a *præmunire*.

To hold any correspondence with THE PRETENDER, or any or either of his sons, or any persons employed by him or them, is HIGH TREASON. *Stat. 109.* By 13. Will. 3. c. 3. “If any of the subjects of the crown of *England* shall, within this realm or without, hold, entertain, or keep any intelligence or correspondence in person, or by letters, messages, or otherwise, with THE PRETENDER, or with any person or persons employed by him, knowing such persons to be so employed; or shall, by bill of exchange, or otherwise, remit or pay any sum or sums of money for the use or service of the *said* PRETENDER, knowing such money to be for such use or service; such person so offending shall be guilty of HIGH TREASON.”

If any or either of the sons of THE PRETENDER shall land, or attempt to land in *Great Britain or Ireland*, or any the dominions thereof, they stand attainted of HIGH TREASON. † *Stat. 110.* By 17. Geo. 2. c. 39. the statute of 13. Will. 3. c. 2. is extended to the eldest or any other son or sons of the *said* PRETENDER, or to any or either of them; and “if the eldest, or any other son or sons of the *said* PRETENDER (b) shall land or attempt to land, or shall be found in *Great Britain or Ireland*, or any of the dominions or territories belonging to the crown of *Great Britain*, or shall be found on board any ship, vessel, or boat, being so on board with intent to land in *Great Britain or Ireland*, or any of the dominions or territories aforesaid, he and they respectively shall, by this act, be adjudged attainted of HIGH TREASON.

(b) James the Second married a princess of the House of *Modena*, and died at *St. Germain* on the 17th September 1707, leaving one son *James Francis*, the pretended prince of Wales here alluded to. *James Francis* married *Maria Clementina Sobiesky*, grand-daughter to the king of Poland, and died in the year 1765, leaving two sons, viz. *Charles Edward Lewis Casimir Stuart*, created DUKE OF ALBANY, and *Henry Benedict Stuart*, created CARDINAL OF YORK. The Count married a princess of *Stolberg*, in Germany, and died at Rome on the 31st December 1788, leaving only a natural daughter, created duchess of Albany. The *Cardinal* was born at Rome on the 6th March 1725, and on the 1st January 1793 was alive and unmarried.

III. Offence of corresponding with rebels or enemies.

If any officer or soldier shall, either abroad or at sea, hold correspondence with a rebel or enemy, he is guilty of HIGH TREASON. † *Stat. 111.* By 2. & 3. Ann. c. 20. “If any officer or soldier in his majesty’s army shall, either upon land out of *England*, or upon sea, hold correspondence with any rebel or enemy, or give them advice or intelligence either by letters, messages, signs, or tokens, or any manner of

“ way

“ way, whatsoever, or shall treat with such rebels or enemies, or enter into any condition with them, without the king’s licence, or licence of the general, lieutenant-general, or chief commander, every person so offending shall be adjudged guilty of HIGH TREASON (a). (a) *Sed qu.* if this statute is not expired.

SECT. 112. By 33. Geo. 3. c. . it is enacted, “ That after the 20th April 1793, during the continuance of the war between *Great Britain* and *France*, if any person residing or being in *Great Britain*, shall knowingly and wilfully, on his own account or credit, or on the account or credit, or by the direction of any other person or persons whomsoever, or wheresoever resident or being, sell, supply, or deliver, or send for the purpose of being sold, supplied, or delivered; or agree to sell, supply, or deliver, or to send for the purpose of being sold, supplied, or delivered, or shall, either on his own account or credit, or on the account or credit, or by the direction of any other person or persons whomsoever, or wheresoever resident or being, cause or procure to be sold, supplied, or delivered, or sent for the purpose of being sold, supplied, or delivered, or authorise or direct any other person whomsoever, or wheresoever resident or being, to sell, supply, or deliver, or to send for the purpose of being sold, supplied or delivered, or shall knowingly and wilfully aid or assist in so selling, supplying, or delivering, or sending for the purpose of being so sold, supplied, or delivered, or in so authorising or directing any other person whomsoever, or wheresoever resident or being, to sell, supply, or deliver, or to send for the purpose of being sold, supplied, or delivered, or to or for the use of the persons now exercising, or who may hereafter, during the said war, exercise the powers of government in *France*, or to or for the use of any armies, troops, fleets, ships, or vessels employed or to be employed by the persons exercising, or who shall exercise, such powers of government as aforesaid, or to or for the use of any person or persons residing or being within any of the dominions of *France*, or any town, territory, port, or place annexed to *France*, or under the government of the persons exercising, or who shall exercise, as aforesaid, the powers of government in *France*; or if any person residing or being in *Great Britain*, shall knowingly and wilfully, during the said war, from and after the said 20th April 1793, buy or procure, or contract or agree to buy or procure, or cause to be bought or procured, or authorise or direct, or cause any other person or persons whomsoever, or wheresoever residing or being, to buy or procure, or to contract or agree to buy or procure, or to cause or direct to be bought or procured,

To sell, supply, or deliver to or for the use of the *French Convention*, or the armies in their employ during the war, any arms, ammunition, or naval or military stores, or any bank notes or bullion, or any provisions, without a licence from the privy council, is HIGH TREASON.

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" or shall knowingly and wilfully aid or assist in buying or
 " procuring, or causing, authorising, or directing to be
 " bought or procured, as aforesaid, for the purpose of be-
 " ing sent into any port or place within the dominions of
 " France, or annexed thereto, or under the government of
 " the persons exercising or who shall exercise, as aforesaid
 " the powers of government in France, any arms, ord-
 " nance, ordnance stores, powder, bullets, pitch, tar
 " hemp, masts, timber, sail cloth, cordage, coals, or salt-
 " petre, or any iron, lead, or copper, whether such iron
 " lead, or copper shall be wrought or unwrought, or any
 " naval or military stores whatsoever, or any note or bill
 " notes or bills of the governor and company of the bank
 " of England, or any gold or silver bullion, or any gold
 " or silver coin, either being coin of this kingdom or of
 " any other country, or any hay, straw, or forage, or any
 " wheat, wheat-flour, barley, barley-flour, maize, rice
 " ground or unground, oats ground or unground, meal
 " corn, grain, pease, beans, potatoes, or any provisions
 " fresh or salted, or other provisions or victuals whatso-
 " ever, or any sailery, boots, or shoes, or leather wrought
 " or unwrought, without licence from his Majesty, under
 " his sign manual, or by order in council, or proclama-
 " tion, first had and obtained, specifying the articles with
 " respect to which the same shall be had and obtained, and
 " also the place and places from which and to which the
 " said articles shall be sent: every person so offending, be-
 " ing thereof lawfully convicted or attainted, shall be deem-
 " ed and adjudged to be guilty of high treason, and shall
 " suffer death, as in case of high treason in counterfeiting
 " the king's money."

To buy or to
 contract or a-
 gree to buy
 any land, te-
 nement, or
 other real
 property, situ-
 ate, lying, or
 being in
 France; or to
 lend or ad-
 vance any mo-
 ney, or bills
 thereon, &c.
 is HIGH
 TREASON.

+ Sect. 113. By 33. Geo. 3 c. . it is further enacted, " That
 " if any person residing or being in Great Britain, from
 " and after the 20th April 1793, during the continuance of
 " the said war, shall knowingly and wilfully, in his own
 " name, or in the name or names of any other or others,
 " buy, or enter into any contract or agreement to buy, or
 " authorise or direct, or cause any person or persons
 " whomsoever, and wheresoever resident or being, to buy,
 " or to contract or agree to buy, any lands, tenements,
 " rents, or hereditaments, or real or immoveable property
 " whatsoever, situate, lying, or being within the domi-
 " nions of France in Europe, or in any territory or place
 " in Europe annexed to France, or under the government
 " of the persons exercising, or who shall exercise the pow-
 " ers of government in France, during the time such ter-
 " ritory or place shall be so annexed, or under such govern-
 " ment, or any estate in any such lands, tenements, rents,

" or

“ or hereditaments, or real or immoveable property whatsoever, or shall lend or advance, or authorise or direct, or cause or procure any other person or persons whomsoever, or wheresoever resident or being, to lend or advance any money, coin, bullion, notes of the bank of *England*, or bills of exchange, or other notes or bills, or other valuable thing of any nature or kind soever, for, towards, or on account of the buying of any such lands, tenements, rents, or hereditaments, or real or immoveable property whatsoever, or any estate therein, or by way of loan or otherwise, on the specific security of any such lands, tenements, or hereditaments, or real or immoveable property, as aforesaid, or any estate therein, or for or towards or on account of the buying of any such security or estate, or shall be aiding or assisting in so buying, as aforesaid, or in making, authorising, directing, or causing to be made, any such buying, contract, agreement, advancement, or loan, as aforesaid, every such person so offending, as aforesaid, being thereof convicted or attainted by due course of law, shall be deemed and be adjudged to be guilty of high treason, and shall suffer death, as in case of high treason in counterfeiting the king's money.”

† *Self.* 114. And by 33. Geo. 3. c. . . “ If any person, being a subject of his majesty, and out of his majesty's dominions, shall in any such manner as aforesaid, make or authorise, direct, procure, or cause to be made, any such buying, purchase, contract, agreement, loan, or advancement, as aforesaid, or shall aid or assist therein, and shall afterwards voluntarily return or come to *Great Britain*, every such person so returning or coming to *Great Britain*, being thereof convicted or attainted by due course of law, shall be deemed and adjudged to be guilty of high treason, and shall suffer death, as in case of high treason in counterfeiting the king's money. No corruption of blood or loss of dower.”

Persons causing or procuring such loan, guilty of HIGH TREASON.

† *Self.* 115. NOTE, By 7. Ann. c. 21. s. 1. it is enacted, “ That such crimes and offences which are HIGH TREASON, or misprision of high treason, within *England*, shall be construed, adjudged, and taken to be high treason and misprision of high treason within *Scotland*, and that no crimes or offences shall be high treason or misprision of high treason within *Scotland*, but those that are high treason or misprision of high treason in *England*; and that the crown may issue out commissions of oyer and terminer in *Scotland*, under the seal of GREAT BRITAIN,

All crimes and offences that are HIGH TREASON by the laws of *England*, and no other, shall be HIGH TREASON in *Scotland*.

“ to such persons as the king shall think fit, and that three
 “ lords of the justiciary be in the said commission of *oyer*
 “ and *terminer*, whereof one to be of the *quorum*, to en-
 “ quire of, hear, and determine such high treason and
 “ misprision of high treason in such manner as is used in
 “ ENGLAND.”

CHAPTER THE EIGHTEENTH.

OFFENCES AGAINST THE KING.

OFFENCES more immediately affecting THE KING are, FIRST, against the bullion. SECONDLY, against the coin. THIRDLY, against the privy council. FOURTHLY, serving a foreign prince. FIFTHLY, injuring the king's armour.

I. OFFENCES AGAINST BULLION.

† *Secl. 1.* BULLION, which signifies with us either gold or silver in the mass (*a*), being the ore or metal whereof the coin is made (*b*), as well as all mines from which it is produced, belongs to the king by virtue of his prerogative (*c*), in order to supply materials for the coinage of the kingdom (*d*).—The offence therefore of diminishing the quantity of the bullion of the kingdom has always been thought of very ill consequence (*e*), as tending to impoverish the nation, and to embarrass trade (*f*); and therefore, with an eye to these inconveniences, the statute 17. Edw. 3. c. 15. which was never printed (*g*), made it felony to transport silver, except when wrought into plate, and carried over by great men to serve their houses; and afterwards the exportation thereof was prohibited by many other statutes (*h*).

(*a*) 9. Edw. 3. c. 20.
(*b*) 2. Inst. 577.
(*c*) Plow. 336.
(*d*) 1. Bl. Com. 294.
(*e*) See Court-teen's Case, Poph. 149.
Hob. 270.
1. Roll. Rep. 299.
(*f*) 4. Inst. 66.
(*g*) 3. Inst. 92.
(*h*) 27. Edw. 3. c. 14.
5. Rich. 2. c. 2.
2. Hen. 4. c. 16.
2. Hen. 6. c. 6.
3. Hen. 8. c. 1.

Secl. 2. But this *general restraint* being found by experience prejudicial to trade, which, by exporting money and bullion to one market, may bring back such goods from another as will more than make up the loss, it is enacted by 15. Car. 2. c. 7. s. 12. "That it shall and may be lawful to and for any person or persons whatsoever to export out of any port in *England or Wales*, in which there is a custom or collector, or out of the town of *Berwick*, all sorts of foreign coin or bullion of gold or silver, first making entry thereof at such custom-house respectively, without paying any duty, custom, poundage, or fee for the same."

BULLION and foreign coin, both of silver and gold, may be exported,

Secl. 3. But this licence to export having been often abused by exporting such silver as, having been coined into English money or wrought into plate, was afterwards melted down into the form of foreign coin or bullion, it is, in order to prevent this mischief, enacted, by the 6. & 7. Will. 3. c. 17. s. 3. "That no person do, or shall

No person shall cast ingots of silver in imitation of Spanish bars, on pain of seal.

“ presume to cast ingots or bars of silver in imitation of
 “ Spanish bars or ingots of silver, nor to stamp any mark
 “ or impression upon any ingot or bar in likeness of the
 “ Spanish marks or impressions. upon pain that the person
 “ herein offending shall, for every such offence, forfeit the
 “ silver so cast, and also the sum of FIVE HUNDRED
 “ POUNDS; one moiety to his majesty and the other to
 “ the informer, to be recovered, with costs of suit, by ac-
 “ tion of debt, bill, plaint, or information.

But no molten
 silver whatso-
 ever shall be
 exported, un-
 less first mark-
 ed at Gold-
 smiths Hall, or
 a certificate
 that no part
 thereof was
 of the silver
 coin or the
 wrought plate
 of the king-
 dom.

SECT. 4. By 6. & 7. Will. 3. c. 17. s. 5. “ No goldsmith
 “ or other person whatsoever shall transport, or cause to
 “ be transported, out of this kingdom of England into any
 “ parts beyond the seas, any molten silver whatsoever, but
 “ such only as shall be marked or stamped at GOLDSMITHS
 “ HALL by the wardens, some or one of them, belonging
 “ to the said company of goldsmiths, which mark or stamp
 “ the said wardens are hereby required to provide, and
 “ therewith to mark or stamp all such silver as shall be
 “ proved before them, or one of them, in such manner
 “ as is herein-after mentioned, to be lawful silver; nor
 “ unless a certificate be first had and obtained under the
 “ hand of one or more of the said wardens, of oath having
 “ been made before him or them by the owner or owners
 “ of such molten silver, and likewise by one credible wit-
 “ ness, that the same is lawful silver, and that no part there-
 “ of was (before the same was molten) the current coin of
 “ this realm, nor clippings thereof, nor plate wrought within
 “ this kingdom; which oath the said wardens, or any
 “ one of them, are and is hereby required and authorised
 “ to administer; and likewise to make and grant A CER-
 “ TIFICATE thereof without fee or reward; an entry of
 “ which certificate shall be duly made by the said wardens
 “ in a book to be kept for that purpose; and in case any
 “ person whatsoever who shall offer any molten silver to
 “ be marked, as is aforesaid, shall not prove by his or
 “ her oath, and likewise by the oath of one credible wit-
 “ ness, that the silver offered to be marked is lawful silver,
 “ and that the same was not, before the melting thereof,
 “ the current coin of the kingdom, nor clippings thereof,
 “ nor plate wrought within the same, then, and in every
 “ such case, it shall be lawful to and for the said wardens,
 “ or any one of them, to seize and detain such molten
 “ silver so offered to be marked, until such time as such
 “ oath and proof shall be made as is aforesaid.”

Molten silver
 shipped with-
 out a certifi-
 cate, or with-
 out being first

SECT. 5. By 6. & 7. Will. 3. c. 17. s. 6. “ If any per-
 “ son whatsoever shall ship, or cause to be shipped, or put
 “ on board any vessel, any molten silver not stamped or
 stamped, is seizable.

“ marked

“ marked by the said wardens, or one of them, and without
 “ certificate first obtained of oath having been made before
 “ the said wardens, or one of them, of the lawfulness of
 “ such silver, in manner as is aforesaid (which certificate
 “ shall be shewn to some one of the commissioners of the
 “ customs for the time being, before any cocket be granted
 “ for the exporting such molten silver), in such case it
 “ shall and may be lawful to and for any officer or officers
 “ of his majesty's customs to seize such silver so shipped
 “ and put on board; one moiety to the king, the other to
 “ the officer or officers so seizing the same.”

SECT. 6. By 6. & 7. Will. 3. c. 7. s. 14. “ And if any
 “ person or persons enter or ship any bullion allowed by
 “ this act to be exported beyond the seas, other than in
 “ the name of the true owner or proprietor, or *importer*,
 “ the exporter thereof shall forfeit the same, or the full va-
 “ lue thereof; one moiety to the king, and the other
 “ moiety to the person who shall seize or discover the
 “ same.”

Bullion ex-
 ported in any
 other than the
 name of the
 true owner, is
 seizable;

SECT. 7. By 6. & 7. Will. 3. c. 17. s. 13. “ In case any
 “ seizure shall happen of any bullion shipped to be ex-
 “ ported, and a doubt arise thereon whether the same be
 “ *English* or *foreign bullion*, the proof shall lie upon the
 “ owner, claimer, or exporter of such bullion that the
 “ same is *foreign bullion*, and had not been melted down
 “ in this realm of *England*, dominion of *Wales*, or town
 “ of *Berwick upon Tweed*.”

If, on seizure,
 a doubt shall
 arise whether
 the bullion
 seized be *En-
 glish* or *foreign*,
 the proof shall
 lie on the ex-
 porter.

SECT. 8. By 6. & 7. Will. 3. c. 17. s. 7. “ If any broker
 “ or brokers, not being a trading goldsmith or refiner of
 “ silver, shall buy or sell any bullion or molten silver, every
 “ such person shall suffer, for every such offence, impri-
 “ sonment for six months, without bail or mainprize.”

No BROKER
 not being a
 goldsmith or
 refiner shall
 buy or sell
 bullion.

SECT. 9. By 6. & 7. Will. 3. c. 17. s. 8. “ And it shall
 “ and may be lawful to and for one or more of the wardens
 “ of the said company of goldsmiths, with any two or
 “ more of the court of assistants of the said company, with-
 “ in the compass of the weekly bills of mortality, and to and
 “ for any two justices of the peace within any county, city,
 “ or town corporate out of the compass of the weekly bills of
 “ mortality, to enter into the house, room, or workshop of
 “ any person who shall be suspected to be guilty of buying or
 “ selling unlawful bullion, and to search for the same; and
 “ in case the occupier or occupiers of such house, room, or
 “ workshop, shall refuse to permit the said warden and assist-
 “ ants, or justices, to make such search as aforesaid, it shall

For the discov-
 ery of offend-
 ers, one or
 more of the
 wardens of the
 Goldsmiths
 company, with
 two of the
 court of assist-
 ants, and two
 justices, may
 enter any sus-
 pected house
 or workshop,
 to search for
 bullion un-
 lawfully sold
 &c.

Persons in whose possession bullion is found, not proving it to be neither coin nor clippings melted, to be imprisoned six months.

“ and may be lawful to such warden and assistants, and
 “ justices, with the assistance of a constable, to break open
 “ any door, box, trunk, chest, cupboard, or cabinet, in
 “ order to search for and discover such bullion as is afore-
 “ said; and in case the person so searching shall at any
 “ time find any such unlawful bullion, the persons so find-
 “ ing the same are hereby required to seize as well such
 “ bullion as the person and persons in whose possession the
 “ same shall be found; and the said wardens, assistants, and
 “ constables, shall bring him and her before the next jus-
 “ tice of the peace; which justice within the weekly bills of
 “ mortality, and the said two justices without the said bills
 “ of mortality, shall and may examine the person so brought
 “ before him, or found by them respectively, upon oath,
 “ whether the bullion so found be lawful silver, and whe-
 “ ther the same was not (before the melting thereof) the
 “ current coin of this realm, or clippings thereof; and in
 “ case the said person so examined shall not prove by his or
 “ her oath, or by the oath of one credible witness, before the
 “ said justice and justices respectively, that the bullion so
 “ found is lawful silver, and that the same was not, before
 “ the melting thereof, the current coin of this realm, nor
 “ clippings thereof, then and in such case the said justice
 “ or justices respectively shall commit the person to ex-
 “ amined to prison, and shall secure the bullion so found,
 “ and shall likewise oblige the persons that can give any
 “ evidence concerning the same, to enter into a recogni-
 “ zance to prosecute the said offender and offenders; and in
 “ case such offender and offenders in whose possession such
 “ unlawful bullion shall be found, shall not, upon his, her, or
 “ their trials on an indictment for melting the current silver
 “ coin of this realm, prove, by the oath of one credible wit-
 “ ness at the least, the bullion so found to be lawful silver,
 “ and that the same was not the current coin of this realm,
 “ nor clippings thereof, then, and for want of such proof,
 “ such offender shall be found guilty of the offence contained
 “ in such indictment, and shall suffer imprisonment for the
 “ space of six months, without bail or mainprize.”

No person to ship molten silver or bullion without certificate and oath that the same is foreign bullion, and not coined, clipt, &c. in England. By 9. & 10. W. 3. c. 28. watches, sword hilts, wrought plate, &c. may be exported, &c.

Stat. 10. By 7. & 8. Will. 3. c. 19. s. 6. “ No person
 “ or persons whatsoever shall ship or cause to be shipped,
 “ or put on board any vessel or ship whatsoever, any mol-
 “ ten silver or bullion whatsoever, either in bars, ingots,
 “ wedges, cakes, pinas, or in any other form whatsoever,
 “ unless a certificate be first had and obtained from the
 “ court of the lord mayor and aldermen of the city of Lon-
 “ don, oath having been made before the said court by the
 “ owner or owners of such molten silver or bullion, and
 “ like-

“ likewise by two or more credible witnessess, that the same
 “ molten silver and bullion, and every part and parcel thereof,
 “ was and is foreign bullion, and that no part thereof was
 “ (before the same was molten) the coin of this realm, or
 “ clippings thereof, nor plate wrought within this kingdom;
 “ which oath the said court of the said lord mayor and al-
 “ dermen of the city of *London* are hereby required and autho-
 “ rised to administer, and to examine strictly all and every
 “ such person or persons as shall make such oath concern-
 “ ing the premises, and likewise to make and grant a certi-
 “ ficate thereof, as aforesaid, without fee or reward; which
 “ certificate shall also contain and express the name and
 “ names of the owner or owners of such molten silver or
 “ bullion, and of the witness or witnessess, and the true
 “ weight of such molten silver or bullion; an entry of
 “ which certificate shall be duly made by the said court, in
 “ a book to be kept for that purpose; which certificate
 “ shall be shewn to the commissioners of the customs for
 “ the time being, or four of them, before any cocket be
 “ granted for the exporting such molten silver or bullion;
 “ and an entry thereof shall be also duly made by the said
 “ commissioners of the customs, in a book to be kept by
 “ them for that purpose.”

Stat. 11. By 7. & 8. Will. 3. c. 19. s. 7. “ If any per-
 “ son or persons whatsoever shall ship, or cause to be ship-
 “ ped or put on board any vessel or ship, any molten silver
 “ or bullion whatsoever, as aforesaid, without oath, certi-
 “ ficate, and entry, first made and obtained, as is before
 “ provided; in every such case it shall and may be lawful to
 “ and for any officer or officers of his majesty’s customs,
 “ or any other person or persons, to seize such molten
 “ silver and bullion so shipped and put on board, as for-
 “ feited; one moiety whereof shall be to his majesty, his
 “ heirs and successors, and the other moiety to the officer
 “ and officers, or persons so seizing the same; and the
 “ owner or owners, proprietor or proprietors of such
 “ molten silver or bullion shall forfeit double the va-
 “ lue of such molten silver or bullion; one moiety whereof
 “ shall be to his majesty, and the other moiety to the per-
 “ son that shall sue or inform for the same, to be reco-
 “ vered, with costs of suit, by action of debt, bill, plaint,
 “ or information, wherein no privilege, protection, or
 “ wager of law, shall be allowed, nor any more than one
 “ imparlance; and the captain or master of such ship or
 “ vessel (if the same belong to a subject) who shall know-
 “ ingly permit the said molten silver or bullion to be put
 “ on board his said ship or vessel, shall forfeit to such per-
 “ son or persons as shall sue or inform for the same, the
 “ sum

Molten silver
or bullion ship-
ped without
oath, &c. officer
may seize, &c.

Master or cap-
tain of a ship
to forfeit 200*l.*

“ sum of two hundred pounds, to be sued for and recovered in manner as aforesaid; and in case the ship or vessel be a man of war, or vessel belonging to his majesty, then the captain thereof shall forfeit the sum of two hundred pounds to any person that shall sue for the same as aforesaid, and shall forfeit his employment, and be made incapable of any office or employment, civil or military.

Penalty on commissioners &c. granting coquets, &c.

Stat. 12. By 7. & 8. Will. 3. c. 19. s. 8. “ If any commissioner or commissioners, officer or officers of the customs, shall grant any coquet for exporting of any molten silver or bullion whatsoever, before such certificate first had as by this act is directed, and entry thereof made in a book hereby directed to be kept by the commissioners of the customs; every such commissioner and officer of the customs so offending shall forfeit the sum of two hundred pounds, and be made incapable of any other office or place of profit or trust whatsoever.

In case of seizure of bullion, proof to lie on the owners;

Stat. 13. By 7. & 8. Will. 3. c. 19. s. 9. “ In case any seizure of any molten silver or bullion shall happen to be made in pursuance and execution of this act, or that any action, bill, plaint, or information, shall be brought for any of the forfeitures or penalties incurred by this act, and a doubt or question shall arise thereon, whether the molten silver or bullion then in question were really and truly foreign bullion, or prohibited to be exported, or otherwise forfeited by this act; in every such case the proof shall lie on the part of the owner, proprietor, or claimer of such molten silver or bullion; and unless the owner, proprietor, or claimer, or the party sued, shall prove that the molten silver or bullion in question was, at the time of the seizure or forfeiture thereof, foreign bullion, and that no part thereof was (before the same was molten) the coin of this realm, nor clippings thereof, nor plate wrought within this kingdom; in every such case, for want of such proof, the molten silver and bullion in question shall be adjudged, deemed, construed, and taken to be molten silver and bullion forfeited by this act, and liable to the penalties before-mentioned.”

and on failure to be forfeited.

To blanch copper for sale, or to buy or sell any heavier than *silver*, and wearing like *standard gold*, is felony. 4. Comm. 98. 1. Hale 214.

Stat. 14. By 8. & 9. Will. 3. c. 26. s. 6. made perpetual by 7. Anne, c. 25. s. 3. “ Whoever shall *blanch copper* for sale, or mix blanchèd copper with silver, or knowingly buy or sell, or offer to sale blanchèd copper alone or mixed with silver, and shall knowingly or fraudulently buy or sell, or offer to sale, any malleable composition or mixture of metals or minerals which shall be heavier than

“than silver, and look, and touch, and wear like standard gold, but be manifestly worse than standard, shall be guilty of FELONY.”

Sec. 15. The endeavours of some persons in making use of extraordinary methods for the producing of gold and silver, were found by experience to be so prejudicial to the public, both from the lavish waste of many valuable materials, and also from the ruin of many families, which had been occasioned by such useless expences, that it was thought necessary to put a check to such practices by some severe law, and for that purpose it was made felony by 5. Hen. 4. c. 4. “to multiply gold or silver, or to use the art or craft of multiplication.” And it was holden, That the practising to find out THE PHILOSOPHER’S STONE, by which it is imagined that all metals may be made gold, was felony within this statute: but this restraint having been found to have no other effect upon the unaccountable vanity of those who fancied such attempts to be practicable, but only to send them beyond sea to try their experiments with impunity in other countries, the statute of 5. Hen. 4. was at last wholly repealed by 1. Will. & Mary, c. 30.

II. OFFENCES AGAINST THE COIN.

Sec. 16. The coin of Great Britain must be made of sterling or standard metal (a), which, for THE GOLD COIN, at present consists of two carats of copper melted with twenty-two carats of fine gold (b); and for THE SILVER COIN, of eighteen pennyweights of copper melted with eleven ounces and two pennyweights of fine silver (c). It is said, that the king’s prerogative does not extend to the alteration of the standard (d); that it is neither safe nor honourable to debase the coin below sterling (e); and that in legitimating even foreign coin, the value of it should be fixed comparatively with our own standard (f); and indeed the legislature has ever appeared anxious to preserve the coin of the realm pure and unadulterated (g).—By a statute 17. Edw. 3. f. 15., which was never printed, the importation of bad money was made felony (h).—By 2. Hen. 6. c. 9. the making of payments in *blanks* which were made of base alloy, was felony.—By 3. Hen. 5. c. 1. the coining or bringing in *galley-halfpence*, *feskens*, or *doydekens*, was felony.—And now, by the 25. Edw. 3. c. 2. and 1. & 2. Philip & Mary, c. 11. it is, as I have shewn in the preceding chapter (i), high treason to bring *false money* into the realm.

Sec. 17. By 6. & 7. Will. 3. c. 17. f. 4. for the better preventing the clipping, diminishing, or impairing the current coin of this kingdom, IT IS ENACTED, “That if any person incurs a penalty of 500l., branding, and imprisonment till paid.

“person

1. Hale 644.
Dyer 88.

(a) 25. Edw. 3. c.
3. c.
Cowp. 279.
(b) Ward’s
Mathematicks 118.
(c) 12. Geo. 2.
c. 26.
(d) 2. Inst. 577.
(e) 1. Hale 197.
(f) 1. Bl. Com.
278.
(g) 13. & 14.
Car. 2. c. 31.
8. Will. 3. c. 8.
6. Geo. 1. c. 11.
12. Geo. 2. c. 26.
9. Geo. 3. c. 37.
14. Geo. 3. c. 42.
16. Geo. 3. c. 46.
18. Geo. 3. c. 45.
(h) 2. Inst. 92.
(i) Antep. 98.
pl. 54. p. 106.
pl. 85.

To buy or sell
clippings or
filings of the
current coin,
till paid.

“ person whatsoever shall buy or sell, and knowingly have
 “ in his custody or possession, any clippings or filings of
 “ the current coin of this kingdom, he shall, for every
 “ such offence, forfeit the said clippings or filings, and
 “ also the sum of FIVE HUNDRED POUNDS; one moiety to
 “ his majesty, and the other to the informer, to be reco-
 “ vered, with costs of suit, by action of debt, bill, plaint,
 “ or information; and the offender shall be also branded
 “ in the right cheek with a hot iron with the letter R;
 “ and, until payment of the said five hundred pounds,
 “ shall suffer imprisonment.”

To sell, buy,
 receive, or pay
 any silver mo-
 ney for less
 than coined
 for, incurs a
 penalty of ten
 pounds for
 every twenty
 shillings.

Stat. 18. By 6. & 7. Will. 3. c. 17. s. 2. “ If any person or
 “ persons whatsoever shall, at any one time or payment, ex-
 “ change, lend, sell, borrow or buy, receive or pay, any
 “ broad silver money, or silver money unclipped, of the coin
 “ of this kingdom, for more in tale, benefit, profit, or ad-
 “ vantage, than the same was coined for, and ought by law
 “ to go for, be lent, sold for, borrowed or bought, received
 “ or paid, shall forfeit the sum of ten pounds for every
 “ twenty shillings that shall be so exchanged, lent, sold for,
 “ borrowed, or bought, received or paid, and so in pro-
 “ portion for any greater or lesser sum; one moiety thereof
 “ to his majesty, and the other moiety to the person who
 “ shall sue or inform for the same, to be recovered (with
 “ costs of suit) by action of debt, bill, plaint, or infor-
 “ mation, wherein no privilege, protection, or wager of
 “ law shall be allowed, nor any more than one impar-
 “ lance.”

To take, re-
 ceive, pay, or
 put off any
 milled money
 at a lower rate
 than its deno-
 mination im-
 ports, is fe-
 lony.
See 6. & 7.
Will. 3. c. 17.
s. 2.

Stat. 19. By 8. & 9. Will. 3. c. 26. s. 6. “ If any per-
 “ son or persons shall take, receive, pay, or put off any
 “ counterfeit milled money, or any milled money whatso-
 “ ever, unlawfully diminished and not cut in pieces, at or
 “ for a lower rate or value than the same by its denomina-
 “ tion doth or shall import, or was coined or counterfeited
 “ for, all and every such person and persons shall be ad-
 “ judged guilty of felony.—But no attainder shall make any
 “ corruption of blood to any heir, or any loss of dower to
 “ the wife of such offender; and no prosecution shall be,
 “ unless commenced within *three months* after such offence
 “ committed.”

To buy, sell,
 pay, receive,
 or put off cop-
 per money for
 less than their
 denominated
 value, is fe-
 lony.

Stat. 20. By 11. Geo. 3. c. 40. “ If any person or per-
 “ sons shall buy, sell, take, receive, pay, or put off any
 “ counterfeit *copper money*, not melted down or cut in
 “ pieces, at or for a lower rate or value than the same by its
 “ denomination doth or shall import or was counterfeited
 “ for,

“ for, every such person and persons shall be adjudged guilty
“ of felony.”

Sec. 21. It is said, upon the construction of these statutes, that if the act of *putting off* the counterfeited coin be not *finally* completed, it does not amount to the crime described in the statute; and therefore, although one party has agreed to sell, and the other has agreed to buy, yet if the parties be apprehended, and the monies seized while it is counting out, the offence is not completed; for the money is not *put off* until it come into the actual custody and possession of the intended buyer.

Wooldridge's
Case, Cases in
Crown Law,
2. Edit. 251.

Sec. 22. By 15. Geo. 2. c. 28. s. 2. “ Whereas the
“ uttering of false money, knowing it to be false, is a crime
“ frequently committed all over the kingdom, and the of-
“ fenders therein are not deterred, by reason that it is only
“ a misdemeanor, and the punishment very often but small,
“ though there be great reason to believe that the common
“ utterers of such false money are either themselves the
“ coiners, or in confederacy with the coiners thereof: for
“ preventing whereof, be it hereby further enacted, if any
“ person whatsoever shall, after the said 29th day of Sep-
“ tember, utter or tender in payment any false or counter-
“ feit money, knowing the same to be false or counterfeit,
“ to any person or persons, and shall be thereof convicted,
“ such person so offending shall suffer six months impris-
“ onment, and find sureties for his or her good behaviour
“ for six months more, to be computed from the end of the
“ said first six months; and if the same person shall after-
“ wards be convicted a second time of the like offence of
“ uttering or tendering in payment any false or counterfeit
“ money, knowing the same to be so, such person shall
“ for such second offence suffer two years imprisonment,
“ and find sureties for his or her good behaviour for two
“ years more, to be computed from the end of the said first
“ two years; and if the same person shall afterwards offend a
“ third time in uttering or tendering in payment any false
“ or counterfeit money, knowing the same to be so, and
“ shall be convicted of such third offence, he or she shall
“ be and is hereby adjudged to be guilty of felony without
“ benefit of clergy.”—But the blood of the heirs of the
offender shall not thereby be corrupted, nor shall his wife
thereby lose her dower, and there shall be no prosecution
for this offence, unless commenced within *six months* after
the offence committed.

To utter or
tender in pay-
ment any false
or counterfeit
money know-
ingly, incurs
for the first of-
fence *six*
months, for the
second *two*
years impris-
onment, and
for the third
DEATH.

Sec.

Uttering false money twice within ten days, or having other false money in custody, is for the first offence a year's imprisonment, for the second death.

Stat. 23. By 15. Geo. 2. c. 28. s. 3. "If any person whatsoever shall utter or tender in payment any false or counterfeit money, knowing the same to be false or counterfeit, to any person or persons, and shall either the same day, or within the space of ten days then next, utter or tender in payment any more or other false or counterfeit money, knowing the same to be false or counterfeit, to the same person or persons, or to any other person or persons, or shall at the time of such uttering or tendering have about him or her, in his or her custody, one or more piece or pieces of counterfeit money, besides what was so uttered or tendered, then such person so uttering or tendering the same shall be deemed and taken to be a common utterer of false money, and being thereof convicted shall suffer a year's imprisonment, and shall find sureties for his or her good behaviour for two years more, to be computed from the end of the said year; and if any person having been once so convicted as a common utterer of false money, shall afterwards again utter or tender in payment any false or counterfeit money to any person or persons, knowing the same to be false or counterfeit, then such person being thereof convicted, shall for such second offence be and is thereby adjudged to be guilty of felony without benefit of clergy."—But the blood of the heirs of such offender shall not be corrupted, nor shall his wife lose her dower; and no prosecution shall be by this act, unless commenced within *six months* after the offence committed.

Second offence may be prosecuted in another county.

Stat. 24. By 15. Geo. 2. c. 28. s. 9. "If any person shall be convicted of uttering or tendering any false or counterfeit money as aforesaid, and shall afterwards be guilty of the like offence in any other county or city, the clerk of the assize, or the clerk of the peace for the county or city where such conviction was so had, shall at the request of the prosecutor, or any other on his majesty's behalf, certify the same by a transcript in a few words, containing the effect and tenor of such conviction; for which certificate two shillings and sixpence, and no more, shall be paid; and such certificate being produced in court, shall be sufficient proof of such former conviction."

Coiners of copper money to be imprisoned two years;

Stat. 25. By 15. Geo. 2. c. 28. s. 6. "Whereas the coining or counterfeiting of any of the copper money of this kingdom is only a misdemeanor, and the punishment often very small, it is enacted, if any person whatsoever shall make, coin, or counterfeit any brass or copper money commonly called a *halfpenny* or a *farthing*, such per-

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“son offending therein, and his, her, and their aiders, abettors, and procurers, being thereof convicted, shall suffer two years imprisonment, and find sureties for his or her good behaviour for two years more, to be computed from the end of the said first two years.

Stat. 26 But the coining or counterfeiting of the copper monies of this realm from being punished only as a misdemeanor, continuing greatly to prevail, to the great prejudice of trade, it is enacted by 11. Geo. 3. c. 40. “That if any person or persons shall make, coin, or counterfeit any of the copper monies of this realm commonly called a *halfpenny* or a *farthing*, such person or persons offending therein, and his, her, or their counsellors, aiders, abettors, and procurers, shall be adjudged guilty of felony.”

and for the second offence shall be guilty of felony.

III. OFFENCES AGAINST THE PRIVY COUNCIL.

Stat. 27. By 3. Hen. 7. c. 14. “If any sworn servant in the CHEQUER-ROLL of the king’s household, under the state of a lord, make any confederacy, compassing, conspiracy, or imagination with any person, to destroy or murder the king, or any lord of this realm, or any other person sworn to the king’s council, he shall be guilty of felony.”

Conspiring to murder the king or peer is felony.

Stat. 28. By 9. Ann. c. 16. “If any person shall attempt to kill, assault, strike, or wound any privy counsellor in execution of his office, he shall suffer as a felon without clergy.”

To wound a privy counsellor in duty is death.

IV. SERVING A FOREIGN PRINCE.

Stat. 29. By 3. Jac. 1. c. 4. f. 18, 19. “Every subject who shall go out of the realm to serve any foreign prince or state, or shall pass over the seas, and there voluntarily serve any such foreign prince or state, not having before his going taken the oath of obedience (a), shall suffer as a felon.

Persons going abroad to serve a foreign prince without taking the oaths of allegiance, &c. are guilty of felony. 3. Inst. 80. Dalt. c. 107. Cawl. 182. (a) N. B. This oath is taken away by 1. Will. and Mary, sess. 1. c. 8. f. 2. and the new oaths and supremacy enjoined in the room thereof. Vide c. 20. f. 41.

Stat. 30. And by 3. Jac. 1. c. 4. f. 20, 21. “If any gentleman, or person of higher degree, or any person who hath born any office or charge in camp or army, shall go out of the realm to serve such foreign prince, &c. without being bound with two sureties in a bond, conditioned, that he shall not be reconciled to the *see of Rome*, nor

“ nor enter into any *conspiracy* against the king, he shall be a felon.”

To enlist or procure another to enlist as a *soldier* in the service of a foreign prince is felony.

Stat. 31. By 9. Geo. 2. c. 30. “ If any subject of the crown of *Great Britain* shall, within *Great Britain* or *Ireland*, enlist or enter himself, or if any person shall procure any subject of his majesty to enter or enlist himself, or hire or retain such person with an intent to cause him to enlist or enter himself, or procure any subject to go beyond the seas, or embark with an intent, and in order to be enlisted to serve any foreign prince, &c. as a soldier, without licence so to do under the sign manual (although no enlisting money hath been or shall be actually paid to or received by him, 29. Geo. 2. c. 17. s. 4.), such offender shall be guilty of felony without clergy— unless within fourteen days he voluntarily discover upon oath the person by whom he was so enlisted, inveigled, or enticed as aforesaid, so as he may be apprehended and convicted.”

To accept a commission in the armies of *France* is death.

Stat. 37. By 29. Geo. 2. c. 17. “ If any subject of the crown shall take or accept of any military commission or otherwise enter into the military service of the *French king*; as a commissioned or non-commissioned officer, without such licence as aforesaid, he shall suffer death as a felon without clergy.”

Persons accepting commissions in the *Scotch brigades* must take the oaths, &c.

Vide also 18.

Hen. 6. c. 19.

5. Eliz. c. 5.

2. & 3. Ed. 6.

c. 2. by which

Stat. 33. By 29. Geo. 2. c. 17. s. 5. “ If any subject shall accept of commissions in the *Scotch brigade*, in the service of THE STATES GENERAL, &c. he shall, within six months from the date of his commission, take and subscribe the oaths of allegiance and abjuration, and transmit a certificate thereof to the *secretary at war*, &c. or on default thereof shall forfeit FIVE HUNDRED POUNDS; one moiety to the king, the other to the prosecutor, &c.”

desertion in time of war is made a capital crime.

V. INJURING THE KING'S ARMOUR.

To embezzle or injure ordnance or naval stores, is felony without clergy.

4. Comm. 101.

4. Burn 254.

5. Inst. 78.

Cawley 90.

And for the

preservations under

1 c. 28. 17.

Stat. 34. By 31. Eliz. c. 4. “ If any person having the charge or custody of the king's armour, ordnance, or munition, &c. or of any victuals provided for the victualling of any soldiers or mariners, &c. shall for lucre and gain, or wittingly, advisedly, and of purpose to hinder or impeach the king's service, imbezel, purloin, or convey away any of the same armour, &c. to the value of *twenty shillings*, he shall be judged guilty of FELONY.

for the preservation of the stores, and the mode of trial and punishment of peculations under the value of 20s. vide 9. & 10. Will. 3. c. 41. 5. Geo. 1. c. 25. 9. Geo. 2. c. 40. s. 10. 9. Geo. 3. c. 30. s. 15. post.

But

“But such offender must be prosecuted within the year next after the offence done; and he shall not forfeit his hereditaments any longer than during his life; nor shall his blood be corrupted, or his wife lose her dower.”

Stat. 35. By 22. Car. 2. c. 5. IT IS RECITED, “That many persons are emboldened to commit the said offences in consideration that they are allowed the benefit of clergy,” AND ENACTED, “that no persons who shall offend against the said act 31. Eliz. c. 4. shall be admitted to the benefit of clergy.”

Stat. 36. By 12. Geo. 3. c. 24. “Whoever shall either within this realm, or in any of the countries or places thereunto belonging, wilfully and maliciously set on fire and burn, or otherwise destroy, or shall cause the same to be done, or shall aid or assist in, the setting on fire, burning, or otherwise destroying of any of his majesty’s ships or vessels of war, whether on float or building in any of his majesty’s dock-yards, or building or repairing by contract in any private yards for the king’s use:—or any of his Majesty’s arsenals, magazines, dock-yards, rope-yards, victualling-offices, or any of the buildings erected therein, or belonging thereto; or any timber or materials there placed, for building, repairing, or fitting out of ships or vessels; or any of his majesty’s military, naval, or victualling stores, or other ammunition of war, or any place or places where any such stores or ammunition shall be kept or deposited, shall suffer death without clergy.”

To burn or destroy any of the king’s ships, stores, dock-yards, or magazines, &c. is felony without clergy.

See Indictment, Cro. Cir. Aff. 24, 25.

Stat. 37. By 22. Geo. 2. c. 33. f. 24. “Every person in the fleet who shall waste, imbezzle, or not carefully preserve any powder, shot, ammunition, or other stores and provisions, their abettors, buyers and receivers (being persons subject to naval discipline), shall suffer such punishment as by a court martial shall be found just in that behalf.”

Persons in the fleet wasting ammunition.

Stat. 38. By 22. Geo. 2. c. 33. f. 25. “Every person in the fleet who shall unlawfully burn or set fire to any magazine, or store of powder, or ship, boat, ketch, hoy, or vessel, or tackle or furniture thereunto belonging, not then appertaining to an enemy, pirate or rebel, on conviction by court martial, shall suffer death.”

Persons in the fleet firing magazines shall suffer DEATH by court martial.

CHAPTER THE NINETEENTH.

OF PRÆMUNIRE.

For the history of *præmunire*, see 4. Comm. c. 8.

OFFENCES more immediately against the king, not capital, come generally under the titles of, 1st, *Præmunire*; 2dly, Misprision; and 3dly, Contempts.

In treating of *præmunire* I shall consider what offences come under this notion; and how they are punished.

OFFENCES coming under the notion of *præmunire*, seem to be against the prerogative of THE CROWN; or against the authority of THE KING and PARLIAMENT.

Those against the prerogative of the crown seem to come under the following particulars: 1. Making use of papal bulls. 2. Derogating from the king's common law courts. 3. Appealing to Rome from any of the king's courts. 4. Exercising the jurisdiction of a suffragan without the appointment of the bishop of the diocese. 5. Refusing to elect or consecrate the person nominated by the king to a bishoprick. 6. Maintaining the pope's power. 7. Bringing in *Agnus Dei*. 8. Contributing to the maintenance of a popish seminary. 9. Refusing the oaths. 10. Solemnizing matrimony with certain branches of the royal family.

Sett. 1. But inasmuch as these offences depend chiefly upon statutes made for the preservation of the sovereignty of THE CROWN from the incroachments of the see of Rome, I shall, in order to shew the reasonableness of these laws, take a short view of those usurpations which made them necessary.

Dav. 83. 88.
Seld. Jan.
Ang. 27.
4. Comm. c. 8.

Sett. 2. It is the general opinion that CHRISTIANITY was first planted in this island by some of the *Eastern Churches*, which is very probable, from the ANTIEN BRITONS observing *Easter* always on the fourteenth day of the month, according to the custom of the East.

Parsons, c. 6.
p. 12. to 25.
57. to 60.
Barrow 258.
to 262.
2. R. Abr. 882.
Co. Litt. 134. 344. Seld. Ja. Ang. 42. 65.

Sett. 3. But THE SAXONS being converted about the year 600 by persons sent from Rome, and wholly devoted to the interest thereof, it cannot be expected that such an opportunity of enlarging the jurisdiction of that See should wholly be neglected.

Sect. 4. And yet *Parsons*, in his attempt to answer *Sir Edward Coke's* fifth report concerning the king's ecclesiastical authority, is scarce able to produce any instances of the papal power in this kingdom before THE NORMAN CONQUEST. Indeed he tells us, that four or five persons were made bishops by the pope at the first conversion, but offers not any example thereof between the year 669 and THE CONQUEST; and it is certain, that all bishopricks were then conferred by the king's delivery of a ring and a pastoral staff.

Sect. 5. Neither is he able to produce any instance that *Parl. c. 6. p.* looks like an appeal to *Rome* before THE CONQUEST, except *29. to 32. 50.* in the case of two bishops. and he is forced to own, that even *to 56.* one of the bishops was deposed by two kings, and could get *Barrow 242.* no relief against either of them, notwithstanding the pope's *to 258.* utmost application in his favour. *Seld. Ja. Ang. 59. 67, 68.*

Sect. 6. Nor can he shew more than four or five instances of exemptions from ordinary jurisdiction, granted *Parl. c. 6. p.* or confirmed by popes to religious houses in those days, *37. to 48.* which plainly shews that this concurrence was not thought *1. H. 7. 25.* necessary; and it appears that our ancient kings, of their *21. Ed. 3. 60.* own authority, exempted some abbeyes from episcopal jurisdiction; and it hath always been a received rule, even *Co. Litt. 144.* in the times of popery, that THE CHANCELLOR shall visit a *F. N. B. 42.* church of the king's foundation, notwithstanding it be not *27. Ed. 3. 83.* specially exempted. *6. H. 7. 14.* *2. R. Abr. 230, 231.*

Sect. 7. But THE POPE having favoured and supported *Davis 98. 99.* *William the First* in his invasion of the kingdom, took that *Roll. 103.* opportunity of enlarging his incroachments, and in this *Paim. 25, 26.* king's reign began to send his legates hither, and prevailed *Seld. Ja. Angl. 67.* at first with *Henry the First*, and afterwards with *king John*, to give up the donation of bishopricks; and in the time of *king Stephen* gained the prerogative of appeals, and in the time of *Henry the Second* exempted all clerks from the secular power.

Sect. 8. Indeed this king did at first strenuously withstand these innovations, and abolished most of them by *Seld. Episc. m s. c. 8.* THE CONSTITUTIONS OF CLARENDON: but upon the death of *Becket*, who, for having violently opposed the king, was slain by some of his servants, THE POPE got such an advantage over the king, that he was never after able effectually to execute those laws. *Davis 91.*

Sect. 9. And not long after this, by a general excommunication of the king and people, for several years be-

cause they would not suffer an archbishop to be imposed upon them, *king John* was reduced to such straits, that he was obliged to surrender his kingdoms to THE POPE, and to receive them again, to hold of him for the rent of a thousand marks.

2. Inst. 584.
Davis 95.

SECT. 10. And in the following reign of *Henry the Third*, partly from the profits of our best church benefices, which were generally given to *Italians*, and others residing at the court of *Rome*, and partly from the taxes imposed by THE POPE, there went yearly out of the kingdom seventy thousand pounds sterling.

2. Inst. 530.

SECT. 11. The nation, being under this necessity, was obliged to provide for the prerogative of the prince and the liberties of the people by many strict laws. And in the reign of *Edward the First*, religious houses were prohibited, under high penalties, to send any thing to their superiors beyond seas; and it was declared by parliament, that the pope's taking upon him to dispose of English benefices to aliens, was an incroachment not to be endured. And soon after these grievances produced those more severe laws against the above-mentioned offences of this nature, the particulars whereof are before set forth.

Whoever shall purchase, pursue, or use any *papal bulls*, shall be guilty of *præmunire*.
Reg. 64.

3. Inst. 127.

27. Ed. 3. f. 1.

c. 1.

38. Ed. 3. f. 1.

c. 4.

Stat. 2. c. 1, 2.

3. 4.

Seld. in Flet.

10. 4.

3. Rich. 2. c. 3.

7. Rich. 2. c.

12.

11. Rich. 2. c.

15.

SECT. 12. THE FIRST OFFENCE, viz. That of making use of *papal bulls*, is made a *præmunire* by many ancient as well as later statutes; for it is enacted by 25. Edw. 3. ft. 6. called the statute of provisors, "that whoever shall, by a papal provision, disturb any patron to present to a benefice, &c. shall be fined and imprisoned till he make full re-nunciation, &c.": by 25. Edw. 3. ft. 5. c. 22. "that if any one purchase a provision of an abbey or priory, he shall be out of the king's protection:" by 38. Edw. 3. and 12. Rich. 2. c. 15. and 13. Rich. 2. ft. 2. c. 2. "that whoever shall accept a benefice contrary to 25. Edw. 3. shall be banished:" by 13. Rich. 2. ft. 2. c. 3. "that whoever shall bring a sentence of excommunication against any person for executing the said statute of 25. Edw. 3. shall suffer pain of life and member:" by 16. Rich. 2. c. 5. "that whoever shall purchase or pursue, or cause to be purchased or pursued, in the court of *Rome* or elsewhere, any translations, processes, sentences of excommunication, *bulls*, instruments, or other things, contrary to the tenor of that statute, which touch the king, against him, his crown, his regality, or his realm, or bring them within this realm, or receive them, &c. shall be out of the king's protection, and their lands and tene-ments, goods and chattels forfeited to the king; and they

" they shall be attached by their bodies, &c.": by 2. Hen. 4. c. 3. " that whoever shall purchase from *Rome* a provision of exemption from ordinary obedience:" and by 2. Hen. 4. c. 4. " that whoever shall put in execution *bulls* purchased by those of the order of *Cisterciens* to be discharged of tithes, shall incur the like penalty." Also offenders of this nature are farther restrained by the 6. Hen. 4. c. 1.; the 7. Hen. 4. c. 8.; the 9. Hen. 4. c. 8.; and the 3. Hen. 5. c. 4.; by which the statutes abovementioned are enforced and explained. And by 23. Hen. 8. c. 21. f. 22. " whoever shall sue for or execute any licence, dispensation, or faculty, from the see of *Rome*;" and by 28. Hen. 8. c. 16. (by which all *bulls*, *briefs*, &c. heretofore obtained from *Rome*, are made void) " whoever shall use, alledge, or plead the same in any court, unless they were confirmed by that statute, or afterwards by the king, shall incur the like penalty." Yet it hath been holden, that the alledging of an *ancient bull* in order to induce another principal matter whereon to ground a title, without claiming any thing from *the bull* itself, is not within this 2. Lev. 251. statute.

Sec. 13. By 13. Eliz. c. 2. those who purchase any *bull*, &c. from *Rome*, are guilty of high treason. But those ancient statutes still continue in force; and it is in the election of THE CROWN to proceed either upon them, or 13. Eliz. c. 2. Also by the said statute of 13. Eliz. " the aiders, comforters, and maintainers of such offenders after the offence, to the intent to uphold the said usurped power, incur a *præmunire*." 1. Hale 643.
Vide sup. c. 17.
Davis 84.

Sec. 14. THE SECOND OFFENCE of this nature, viz. If a subject sue in any foreign court, to defeat any proceeding in the common-law courts, it is a *præmunire*. That of derogating from the king's common-law courts, is said to have been a high offence at common law, and is made a *præmunire* by many ancient statutes; for by 27. Edw. 3. c. 1. and 38. Edw. 3. of provisors, " If any subject draw any out of the realm in plea, whereof the cognizance pertains to the king's courts, or of things whereof judgments be given in the king's court, or sue in any other court, to defeat or impeach the judgments given in the king's court, he shall be warned to appear, &c. in proper person, at a day containing the space of two months; at which if he appear not, he and his proctors, &c. shall be put out of the king's protection, his lands and chattels forfeited, his body imprisoned and ransomed at the king's will, &c."—Also in 21. Jac. 1. c. 3. f. 4. to procure any action to be delayed after notice, other than by regular process, is a *præmunire*. 2. R. Ab. 176.
Raft. 466.
B. 2. c. 48. f. 9.
3. Inst. 125.
B. Præmu. 3.

Sec. 15. And by 16. Rich. 2. c. 5. "Both those who shall pursue or cause to be pursued in the court of *Rome* or elsewhere any processes or instruments, or other things whatsoever which touch the king, against him, his crown, and regality, or his realin, and also those who shall bring, receive, notify, or execute them, and their abettors, &c. shall be put out of the king's protection, &c."

1. Bull. 299.
1. Inst. 725.
C. Jac. 336.

Sec. 16. In the construction of these statutes it was holden, that certain commissioners of sewers for summoning one before them who had got a judgment at law, and imprisoning him till he would release it, were guilty of a *præmunire*.

3. Inst. 123.
4. H. 4. c. 23.
2. Cha. Caf. 97.
D. 201. 301.
1. Lev. 241.
Hard. 125.
1. D. Abr. 764.
1. S. 1. 463.
3. Mod. 59.
3. Keib. 221.

Sec. 17. Also there have been formerly many strong opinions, that suits in equity to relieve against a judgment at law are within these statutes; especially if the end thereof be to controvert the very point determined at law, or to seek relief after judgment in a case wherein the law may relieve, as against excessiveness of damages, &c. But it seems to be generally agreed at this day, that no such suit is within the intention of the said statutes.

2. Bull. 299.
1. Roll. 160.
(a) 3. Inst. 120,
121, 122.
B. Præmun.
1. 12. 16, 31.
15. H. 7. 9.
12. Co. 37.
2. R. Abr. 177.
Moor 838.
C. Jac. 134.

Sec. 18. It hath been said, that suits in the admiralty or ecclesiastical courts within the realm are within 16. Rich. 2. c. 5. by force of those words, "*or elsewhere*," if they concern matters the cognizance whereof belongs to the common law; as where a bishop deprives an incumbent of a donative, or excommunicates a man for hunting in his parks, &c. or where (a) commissioners of sewers imprison a man for not releasing a judgment at law.

Sec. 19. But it seemeth, that a suit in those courts for a matter which appears not by the libel itself, but only by the defendant's plea, or other matter subsequent, to be of temporal cognizance, as where a plaintiff libels for tithes, and the defendant pleads that they were severed from the nine parts, by which they became a lay-fee, is not within the statute, because it appears not that either the plaintiff or the judge knew that they were severed.

To appeal to the court of *Rome* is a *præmunire*.

Sec. 20. THE THIRD OFFENCE of this nature, viz. That of appealing to *Rome* from any of the king's courts, is made a *præmunire* by 24. Hen. 8. c. 12. and c. 20, 21. and 25. Hen. 8. c. 19. by which it is enacted, "that all such appeals as formerly were made to *Rome*, shall from henceforth be made to the high court of chancery."

Sec.

Sect. 21. THE FOURTH OFFENCE of this nature, *viz.* To exercise the office of a *suffragan* is a *præmunire*. That of exercising the jurisdiction of a *suffragan* without the appointment of the bishop of the diocese, is made a *præmunire* by 26. Hen. 8. c. 14. which sets forth at large for what towns such *suffragans* may be nominated by the king, and also how they may be nominated, consecrated, and commissioned.

Sect. 22. THE FIFTH OFFENCE of this nature, *viz.* To refuse consecration to a bishop after election, is a *præmunire*. That of refusing to elect or consecrate the person nominated by the king to a bishoprick, is made a *præmunire* by 25. Hen. 8. c. 20. f. 7. by which it is enacted, "that if any dean and chapter refuse to elect the person named in the king's letter for a bishoprick, and to signify such election to the king within twenty days after the licence shall come to their hands, or if any archbishop or bishop after such election (or nomination by the king in default thereof signified unto them by the king), shall refuse within twenty days to confirm and consecrate the person so signified to them, they incur a *præmunire*."

Sect. 23. THE SIXTH OFFENCE of this nature, *viz.* To maintain the power of THE POPE, 5. Eliz. c. 1. That of maintaining the pope's power, is made a *præmunire* upon the first conviction, and high treason upon the second.

Sect. 24. THE SEVENTH OFFENCE of this nature, *viz.* To import any *Agnus Dei* or other superstitious ornaments, is a *præmunire*. That of bringing in *Agnus Dei*, is made a *præmunire* by 13. Eliz. c. 2. f. 7, 8. by which it is enacted, "that if any one shall bring into the realm, &c. any *Agnus Dei*, crosses, pictures, beads, or such like superstitious things, pretended to be hallowed by the bishop of Rome, &c. Cawley, 52, 53. and shall deliver or offer the same to any subject to be worn or used in any wise; or if any one shall receive the same to such intent, and not clear himself by discovering the offender, &c. he shall incur a *præmunire*."

Sect. 25. And so shall a justice of peace in the same Cawley 54 county, who having any offence in that act declared unto him, shall not declare it to a privy counsellor within sixteen days.

Sect. 26. THE EIGHTH OFFENCE of this nature, *viz.* Keeping a Popish school. That of contributing to the maintenance of a *Popish seminary*, is made a *præmunire* by 27. Eliz. c. 2. f. 6.

Sect. 27. THE NINTH OFFENCE of this nature, *viz.* Refusing to take the oaths is a *præmunire*. That of refusing the oaths, is made a *præmunire* by several statutes; for by 1. Eliz. c. 1. f. 19. it is enacted, "that is a *præmunire*, " all

N.B. The 1. Eliz. c. 1. as far as concerns the oath, is repealed by 1. W. & M. c. 8. f. 2.

"all ecclesiastical persons, and all ecclesiastical and temporal officers, and all persons having the king's fees or wages; and all persons taking orders, or any degree in any university within the realm, shall take the oath of supremacy, under pain of losing their benefices and offices."

By 5. Eliz. c. 1. f. 5. "All the persons abovementioned who are required by the said statute of 1. Eliz. c. 1. to take the said oath, and all school-masters, publick and private, barristers, benchers, readers, ancients in any house of court, &c. attornies, sheriffs, and officers belonging to the common or any other law, or to the crown, or to any court whatsoever, shall take the said oath in open court, before they shall be admitted to any such vocation or office, &c. And if they belong not to any court, that then they shall take the same before such person as shall admit them to such vocation, &c. or before commissioners appointed under the great seal, &c."

By 5. Eliz. c. 1. f. 6. "Any bishop may tender the said oath to any spiritual person within his diocese, as well in places exempt as others;" and by f. 7. "that commissioners may be appointed by the lord chancellor to tender the same to such persons as by their commission they shall be authorized to tender it unto."

By 5. Eliz. c. 1. f. 8. "If any person, compellable by either of the said acts, or appointed by such commissioners to take the said oath, shall refuse to take it on a tender thereof, he shall incur a *præmunire*."

And by 5. Eliz. c. 1. f. 9. "Such refusal shall be certified within forty days before the king in his court of king's bench, by those who have authority to tender the said oath, under the penalty of one hundred pounds; and that the sheriff of the county wherein the said court shall sit, may impanel a jury, who shall enquire of such refusal, in such manner as if it had happened in the same county."

In the construction of these statutes it hath been resolved,

Raym. 272.
1. Ven. 171.
2. Keb. 825.

S. A. 28. *First*, That the obligation to take the said oath continued after the death of *Queen Elizabeth*, though the statutes say nothing of her *successors*; and the like resolution also has been made in relation to the paths appointed by subsequent statutes.

Seft. 29. Secondly, That in a commiffion authorifing Raym. 445. perfons to tender the faid oath, a general defcription of the perfons to whom it fhall be tendered is fufficient, without naming them particularly by their names.

Seft. 30. Thirdly, That if any perfon who tendered the Dyer 234. oath as bifhop, was not a bifhop at that time, the defendant may give it in evidence upon the general iffue.

Seft. 31. Fourthly, That the faid oath muft in fubftance 1. Bulft. 197, be taken in the very words expreffed in the afts, and can- 198. not be qualified with any referve whatever: yet it hath been 2. Bulft. 290. refolved, that to ufe the words "*in confcience*" inftead of 1. Ven. 172, "*in my confcience*," or "*fea of Rome*" inftead of "*fee of* 173. Rome," makes no material variance.

Seft. 32. Fifthly, That a certificate of a refusal of the Raym. 445. faid oath made to the judges of the faid court of the king's bench by name, and not to the king in his faid court, is fufficient within the meaning of the ftatute.

Seft. 33. Sixthly, That an ecclefiaftical perfon is well Dyer 234, 363. defcribed in fuch a certificate by the addition of *legum doctior, et facris ordinibus conftitutus*, without adding *clericus, &c.*

Seft. 34. Seventhly, That fuch a certificate being entered Dyer 234. of record, as brought into court fuch a day and year *per A. B. Cancellar.* of fuch a bifhop, is good, without entering that it was fo brought *per mandatum epifcopi*.

Seft. 35. Eighthly, That the trial muft be by a jury of Dyer 234. the county wherein the oaths were refufed; for the ftatute only authorifes an indictment by a jury of the county where- in the court fits.

Seft. 36. Ninthly, That any mif-recital of the very See the books words of the oath, in an indictment for not taking it, is above cited. erroneous.

Seft. 37. By 3. Jac. 1. c. 4. f. 13, 14. "Any bifhop, The 3. Jac. 1. c. 4. as far as
"or two juftices of peace, whereof one is to be of *the quo-* c. 4. as far as
"rum, might tender the oath of obedience therein pre- concerns the
"fcribed, to any perfon above the age of eighteen years, oaths, is re-
"being under the degree of nobility, and convicted or in- pealed by 1.
"dicted of recufancy, or not having received the sacra- W. & M. c. 8.
"ment twice in the year paff, and alfo to any fufpected f. 2.
"ftranger who fhall not purge himfelf upon oath; and
"fhall certify the names of fuch as take the faid oath to
"the next quarter feflions, and commit thofe who refufe
"it

Skin. 11.

“ it till the next assizes or sessions, where the same shall be
 “ again tendered; and if the said persons, or any other
 “ persons whatsoever of the age of eighteen years, other
 “ than noblemen or noblewomen, shall there refuse to take
 “ it, they incur a *præmunire*, unless they be *femes covert*,
 “ who shall be committed till they take it.”

Sec 31. Geo.
 3. c. 32. post.
 ch. 24. f. 5.

Sec. 38. By 3. Jac. 1. c. 4. f. 41. “ The lords of the
 “ council in like manner may tender the said oath to any
 “ nobleman or woman of the age of eighteen years, who
 “ refusing the same incur a *præmunire*, *femes covert* ex-
 “ cepted.”

Sec Cawley
 246, &c.

Sec. 39. By 7. Jac. 1. c. 6. f. 2. 26, 27. “ All persons
 “ whatsoever, as well ecclesiastical as temporal, of what
 “ estate, dignity, pre-eminence, sex, quality or degree so-
 “ ever he or she shall be, above the age of eighteen years,
 “ being in that act mentioned and intended, shall take the
 “ said oath; and any privy counsellor, or bishop within
 “ his diocese, may require any baron or baroness, of the
 “ age of eighteen years; and any two justices of the peace,
 “ whereof one to be of the *quorum*, may require any other
 “ person of that age to take it.—And if any person of or
 “ above the said age and degree shall be presented, &c. for
 “ not coming to church, &c. then three of the privy coun-
 “ cil, whereof the lord chancellor, &c. to be one, shall re-
 “ quire such person to take the said oath.—And if any per-
 “ son whatsoever, of the said age and under the said degree,
 “ shall be presented, &c. for not coming to church, &c.
 “ or if the minister, &c. shall complain to any justice of
 “ peace, &c. and the justice shall find cause of suspicion,
 “ then any one justice of peace shall require such person to
 “ take the said oath, &c. And all such persons refusing a
 “ tender of the said oath, shall be bound over to *the assizes*
 “ or *the sessions*, where, if they refuse again, they incur a
 “ *præmunire*.” And f. 27. “ All such refusers are disabled
 “ to execute any public place of judicature, or bear any
 “ other office (being no office of inheritance or ministerial
 “ function), or to practise the common or civil law, phy-
 “ sick or surgery, or the art of an apothecary.”

12. Co. 130,
 131.

Sec. 40. In the construction of these statutes it hath
 been resolved, that the justices of peace, &c. may send
 their warrant to bring such persons before them, but that
 they cannot authorise the constable to break open the doors
 to take them.

Sec. 41. But by 1. William & Mary, c. 8. the oaths of
supremacy and obedience prescribed by these acts were abro-
 gated,

gated, and the following *oath* and *declaration* substituted in their room:—"I *A. B.* do sincerely promise and swear, Vide 1. Geo. 1. c. 13.
 "that I will be faithful and bear true allegiance to his ma-
 "jesty KING GEORGE."—"I *A. B.* do swear, that I do 6. Geo. 3. c. 53.
 "from my heart abhor, detest, and abjure, as impious and
 "heretical, that damnable doctrine and position, that
 "princes excommunicated or deprived by the pope, or any
 "authority of the see of Rome, may be deposed or murdered
 "by their subjects, or any other whatsoever." "And I
 "do declare, that no foreign prince, person, prelate, state,
 "or potentate, hath or ought to have any jurisdiction,
 "power, superiority, pre-eminence or authority ecclesiasti-
 "cal or civil within this realm."

Sec. 42. And by 1. Will. & Mary, c. 8. f. 3, 4, 5. "All Vide ch. 24.
 "persons who are required to take, or authorised to tender
 "the said abrogated oaths, or either of them, are in like
 "manner required and authorised to take and tender the
 "said oath and declaration, under the same penalties, &c."

Sec. 43. By 7. Will. 3. c. 24. "Serjeants at law, Vid. ch. 24. f. 7.
 "counsellors, attornies, solicitors, proctors, clerks or no- 1. Comm. 368.
 "taries, practising as such in any court whatsoever, without 4. Comm. 115.
 "taking the said oaths and subscribing the said declaration, 116: 123.
 "incur a *præmunire*."

† *Sec. 44.* * THE TENTH OFFENCE of this nature, *viz.*
 Illegally solemnizing marriage with any of the *royal family*, or
 assisting therein, is made a *præmunire* by 12. Geo. 3. c. 11.
 which enacts, "that no descendant of the body of his late No descend-
 "majesty king *George* the Second, male or female (other ant of Geo. 2.
 "than the issue of princesses who have married, or may other than,
 "hereafter marry, into foreign families), shall be capable of &c. capable of
 "contracting matrimony without the previous consent of contracting
 "his majesty, his heirs or successors, signified under the matrimony
 "great seal, and declared in council (which consent, to without con-
 "preserve the memory thereof, is hereby directed to be set sent, &c.
 "out in the licence and register of marriage, and to be
 "entered in the books of the privy council); and that
 "every marriage, or matrimonial contract, of any such de-
 "scendant, without such consent first had and obtained, shall
 "be null and void, to all intents and purposes whatsoever."

† *Sec. 45.* * By 12. Geo. 3. c. 11. f. 2. "In case
 "any such descendant of the body of his late majesty king
 "George the Second, being above the age of twenty-five
 "years, shall persist in his or her resolution to contract
 "a marriage disapproved of, or dissented from, by the
 "king, his heirs or successors; then such descend-
 "ant,

“ant, upon giving notice to the king’s privy coun-
 “cil, which notice is hereby directed to be entered in the
 “books thereof, may at any time from the expiration of
 “twelve calendar months after such notice given to the
 “privy council as aforesaid, contract such marriage; and
 “his or her marriage with the person before proposed, and
 “rejected, may be duly solemnized, without the pre-
 “vious content of his majesty, his heirs or successors;
 “and such marriage shall be good, as if this act had never
 “been made, unless both houses of parliament shall, be-
 “fore the expiration of the said twelve months, expressly
 “declare their disapprobation of such intended marriage.

Persons who
 shall wilfully
 assist, &c. incur
 the penalties
 provided by
 16. Rich. 2.

† By 12. Geo. 3. c. 11. s. 3. “Every person who shall know-
 “ingly or wilfully presume to solemnize, or to assist, or to be
 “present at the celebration of any marriage with any such
 “descendant, or at his or her making any matrimonial con-
 “tract, without such consent as aforesaid first had and ob-
 “tained, except in the case abovementioned, shall, being
 “duly convicted thereof, incur and suffer the pains and
 “penalties ordained and provided by the statute of provi-
 “sions and *præmunire*.”

And now I am in THE SECOND PLACE to consider those
 offences against the authority of king and parliament, which
 come under the notion of *præmunire*.

Maliciously to
 preach or af-
 firm that the
Pretender has
 any right to
 THE CROWN,
 is a *præmunire*.

Sec. 44. By 6. Ann. c. 7. “If any person shall mali-
 “ciously and directly, by preaching, teaching, or advised
 “speaking, declare, maintain, and affirm, that the pre-
 “tended *Prince of Wales* hath any right or title to the crown
 “of these realms, or that any other person or persons hath
 “or have any right or title to the same, otherwise than ac-
 “cording to 1. Will. & Mary, c. 2. and 12. Will. 3. c. 2.
 “and the acts then lately made in England and Scotland,
 “mutually for the union of the two kingdoms; or that
 “the kings or queens of this realm, with the authority of
 “parliament, are not able to make laws to limit the crown
 “and the descent, &c. thereof, shall incur a *præmunire*.”

If any peer of
 Scotland met
 for the elec-
 tion of the *six-
 teen peers* pro-
 pose any other
 matter, he is
 guilty of a
præmunire.

By 6. Ann. c. 23. “It shall not be lawful for the peers
 “of Scotland assembled and met together for the electing
 “*sixteen peers* to sit and vote in the house of peers in the par-
 “liament of Great Britain, to act, propose, debate, or treat
 “of any other matter or thing whatsoever, except only the
 “election of the said *sixteen peers*; and every peer who shall
 “at such meeting presume to propose, debate, or treat of
 “any other matter or thing contrary to the direction of this
 “act, shall incur the penalty of a *præmunire*.”

Sec. 7.

Sec. 45. As to THE SECOND GENERAL POINT of this chapter, *viz.* In what manner offences of this nature are punished. It is to be observed, that most of the statutes of *præmunire* refer the punishment to 16. Rich. 2. c. 5. which enacts, that those who offend against the purport thereof “shall be put out of the king’s protection, and their lands and tenements, goods and chattels forfeited to our lord the king; and that they be attached by their bodies, if they may be found, and brought before the king and his council, there to answer to the cases aforesaid; or that process be made against them by *præmunire facias*, in manner as is ordained in other statutes of provisors.”

4. Comm. 117.
1. Bulst. 199.
Co. Lit. 129.
3. Inst. 125.
218.
B. 2. p. 444.

Sec. 46. Inasmuch as this statute expressly saith, that such offenders shall be put out of the king’s protection, and also the statute of 25. Edw. 3. f. 5. c. 22. had farther added, “that any one might do with a purchaser of the provisions therein prohibited as with the king’s enemy, and that he who should offend against such a one in body, lands, or goods, should be excused,” it was formerly holden, that a person attainted in a *præmunire* might lawfully be slain by any one, as being the king’s enemy, and out of the protection of the laws; but the latter opinions seem to have disapproved of this severity. However, it is expressly enacted by 5. Eliz. c. 1. f. 21, 22. “that it shall not be lawful to kill any person attainted in *præmunire*, saving such pains of death or other hurt or punishment as heretofore might, without danger of law, be done upon any person that shall send or bring into the realm, or within the same shall execute, any process, &c. from the see of Rome.”

Co. Lit. 130.
12. Co. 68.
3. Inst. 128.
B. Cor. 197.
Jenk. 199.

Sec. 47. But howsoever the law may stand in relation to such persons as are within the exception of this act, it is certain that no person whatsoever attainted of any *præmunire* can bring an action for any injury whatsoever; and that no one knowing him to be guilty can with safety give him aid, comfort, or relief.

1. Inst. 130.
1. Eliz. 1. c. 39.
Post. 126.
Staunf. 44.
Plow. 97.
4. Comm. 118.
3. Jac. 333.

Sec. 48. But it hath been resolved, that those general words in the statute 16. Rich. 2. c. 5. that “all the lands and tenements shall be forfeited,” extend not to land entailed after the death of the offender.

1. Inst. 130.
3. Inst. 126.
2. Lev. 169.
B. 2. c. 49. f. 28.
C. Car. 172.
Jones 217.

Sec. 49. Also it hath been resolved, that a statute, by appointing that an offender shall incur the penalty and dan-

1. Ven. 173.
For the judgment in *præ-*
munire, see b. 2. c. 48. f. 9 to 273.

munire, see b. 2. c. 48. f. 9 to 273.
ger

per mentioned in the 16. Rich. 2. c. 5. does not confine the prosecution for the offence to the particular process thereby given.

The following offences also have been made subject to the penalties of a *præmunire*:

1. To molest the possessors of abbey lands granted by parliament to Henry the Eighth and Edward the Sixth, 1. & 2. Ph. & Mary c. 8. f. 40.
2. To obstruct the process of making gunpowder, or to prevent the importation of the ingredients of which it is made, by virtue of a pretended authority from the crown. 16. Car. 1. c. 21. 1. Jac. 2. c. 8.
3. To send any subject of this realm a prisoner beyond the seas in defiance of the *habeas corpus* act, 31. Car. 2. st. 2. See book 2. chap. sect.
4. To conspire to avoid the seizure or forfeiture upon the importation of cattle, as mentioned in the act 20. Car. 2. c. 7.
5. To project any scheme by public subscription to the prejudice of great numbers in their trade, and similar to the South-Sea project. 6. Geo. 1. ch. 18. See Str. 472. L. Ray. 1361. post. ch.

CHAPTER THE TWENTIETH OF MISPRISION OF TREASON.

THE word "*misprision*" has not any certain signification, but is generally applied to all such high offences as are under the degree of capital, and nearly bordering thereupon. It is said, that a *misprision* is contained in every treason or felony whatsoever, and that one who is guilty of felony or treason may be proceeded against for a *misprision* only, if the king please.

2. R. 3. 10.
S. P. C. 37.
B. Cor. 174.
Treas. 25. 31.
Skin. 636.
1. Hale 374.
708.
3. Inst. 36.
4. Comm. 119.
in Muf. Brit.

Hudson of the court of star-chamber MSS.

MISPRISIONS are generally said to be twofold.—First, *Negative misprisions*, which consist in the omission of something which ought to be done.—Secondly, *Positive misprisions*, which consist in some misdemeanor actually committed.

Señ. 2. The negative *misprision* more immediately against the king is commonly called *misprision of treason*, which is an offence consisting in the bare knowledge and concealment of high treason (whether it be such by 25. Edw. 3. or subsequent statutes) without any degree of assent thereto; and this is declared to be a *misprision* only by 1. & 2. Mary c. 10. But at law, any delay in discovering *high treason*, whatever excuses the party might have for it, was deemed an assent to it, and consequently high treason.

Señ. 3. And at this day, if the concealment of high treason be accompanied with any circumstances which shew an approbation thereof, it amounts to high treason; as if one, having notice before-hand that persons designed to meet in order to conspire against the government, go into their company and hear their treasonable consultation and conceal it; or if one who has been once accidentally in such company and heard such discourse, meet the same company a second time, and hear such like discourse, and conceal it.

Señ. 4. Also whoever receives and comforts a traitor, knowing him to be such, whether by counterfeiting of coin, (a) or otherwise, is himself a principal traitor; for such a receipt of a felon makes the receiver an accessory to the felony, and whatever makes an accessory in felony, makes a principal in treason.

3. H. 7. 10.
3. Inst. 138.
12. Co. 81, 82.
Con. Dy. 296.
Inf. B. 2. c. 29.
(a) Qu.
1. Hale 233.
237. 613. Kely. 22. S. P. C. 37.

Señ. 5. Neither can a person who has knowledge of a treason, secure himself by discovering that there will be a rising

rising in general, without disclosing the very persons intending to rise; nor even by discovering of these to a private person who is no magistrate.

Kely. 22. *Seft. 6.* But it seems that one who is only told in general that there will be a rising, without knowing any of the persons or particulars of the design, is not bound to make any discovery at all.

1. Hale 376. *Seft. 7.* There is one *positive misprison* which is made
4. Com. 121. *misprison of treason* by 13. Eliz. c. 2. by which it is enacted,
 “ that those who forge *foreign coin* not current here, their
 “ aiders, abettors, and procurers, are guilty of misprison of
 “ treason, &c.”

CHAPTER THE TWENTY-FIRST.

OF CONTEMPTS

AGAINST

THE KING'S COURTS.

OTHER positive misprisions more immediately against THE KING seem reducible to contempts against his palace or courts of justice; against his prerogative; against his person or government; and against his title.

CONTEMPTS against the king's palace, &c. have always been looked upon as very high misprison-. By the ancient law, before the conquest, fighting in the king's palace was a capital offence; and now by 33. Hen. 8. c. 12. f. 7. "Mali- cious striking in the king's palace, whereby any blood shall be shed, is punishable with the loss of hand, perpetual imprisonment, and fine at the king's pleasure." 3. Hen. 7. c. 14. 9. Ann. c. 16. Steirn de jure Goth. 1. 3. c. 4. L. L. Alured cap. 7. & 34. 3. Inst. 140. Pop. 206.

Sec. 2. It seems questionable, from the construction of this whole act, and the general tenor of the law-books, whether striking in a palace wherein the king is not at the time actually resident (a), be within the statute; and it is said that the instance which is given in the *Third Institute*, of a person's hand being cut off for striking in THE TOWER, is not warranted by the record. See first part of the act. S. P. C. 38. B. Pain 16. Dalt. c. 90. 6. Mod. 75, 76. 3. Inst. 140. 4. Com. 125. (a) See the case of the Earl of Devonshire and Col. Culpepper, 11. State Trials, 133.

Sec. 3. However it is certain, that, by the common law which continues to this day, striking in *Westminster hall*, where the king is only present as represented by his judges, and by their administration distributing justice to his people, is more penal than any striking in another place in his actual presence; for the latter is not punished with the loss of hand, unless some blood be drawn, nor even then with the loss of lands or goods; but if a person draw his sword on any judge in the presence of the court of *king's bench*, *chancery*, *common pleas*, or *exchequer*, or before the justices of *assize*, or *oyer and terminer*, whether he strike or not; or strike a juror; or any other person, with or without a weapon, he shall lose his hand and his goods, and the profits of his lands during life, and suffer perpetual imprisonment (b), if the indictment lay the offence as done *coram domino rege*. L. L. Ina. c. 6. L. L. Canuti, c. 56. L. L. Alured c. 7. 2. Inst. 549. 3. Inst. 140. S. P. C. 38. Dalt. c. 90. 41. Ass. 25. 22. E. 3. 18. Dyer 188. See b. 2. c. 48. f. 11. Dalif. 23. 2. R. Abr. 76. 1. Keb. 751. 12. Co. 71. (b) Owen 126. C. Eliz. 405.

Sec. 4. Neither can one who is guilty of such offence excuse the same by shewing that the person so struck by him gave the first assault. 1. Lev. 106. 6. Mod. 172. Noy 104. C. Jac. 367.

22. F. 3. 13. *Sett.* 5. Also he who rescues a prisoner from any of the
3. Inf. 141. courts abovementioned, without striking a blow, shall forfeit his goods and the profits of his lands, and suffer imprisonment during life, but not lose his hand, because he did not strike.
Con.Sum.131.

C. Eliz. 405. *Sett.* 6. And he who makes an affray in the palace-yard
C. Car. 373. near the said courts, but out of their view, shall be imprisoned during the king's pleasure, and severely fined, but not lose his hand.
W. Jen. 545.
Owen 120.

Sett. 7. And not only those who are guilty of such an actual violence, but also those who disturb such courts by threatening or reproachful words to any judge sitting in them, are guilty of a high misprision: and in the time of
(a) M. Term *Edward the First* (a), one *William de Bruce*, who upon hearing judgment given against him in THE EXCHEQUER, said
33 & 34. Edw. to THE CHIEF BARON, "*Roger, Roger, thou hast had thy*
1. Moor 819. "*will of me, which of a long time thou hast sought, and I will*
3. Inf. 142. "*remember it*," was for these words imprisoned during the king's pleasure, and ordered to walk from THE KING'S BENCH to THE EXCHEQUER, bareheaded and ungirt, and to ask forgiveness, &c. And in the time of *Charles the First*, one
(b) C. Car. 503. *Harrison* (b), for rushing into the court of common pleas, and saying to JUSTICE HUTTON sitting there, "I do accuse
504. "*Mr. justice Hutton of high treason*," was fined five thousand pounds, and imprisoned during the king's pleasure, and ordered to go to all the courts of *Westminster-hall* with a paper on his head, shewing his offence, and to make his submission, &c. These cases are the more remarkable, because in the first the offender was of a very honourable family, and in the second a bachelor of divinity, and yet condemned to such corporal punishment, the lowest of which is in judgment of law higher than the greatest fine whatever.

Hob. 220. *Sett.* 8. Also all who reflect on the justice or honour of those high courts seem to be indictable and highly finable; as if one charge an exemplification under THE GREAT SEAL to be contrary to the original.
Moor 563.
Pop. 135.

1. Lev. 107. *Sett.* 9. Also he who gives another *the lie* in *Westminster-hall* sitting the courts, shall be bound to his good behaviour.
1. Keb. 558.

3. Inf. 141. *Sett.* 10. And he who makes an affray in the presence of any of the king's inferior courts of justice, is highly finable, but not punishable with the loss of hand, &c.
12. Co. 71.

Sett. 11. And he who speaks contemptuous and reproachful words to the judge of such a court in execution of his office is immediately fineable by such judge (a), or, as some say, may be (b) indicted, &c. as if one give *the lie* to a judge of a court-leet in the face of the court (c), or, being (d) admonished by him to pull off his hat, say, "I do not value what you can do," or tell him in the face of the court that he is (e) forsworn, or call him (f) fool, &c. or say, "If I cannot have justice here, I will have it elsewhere (g)." (a) C. Eliz. 78. 2. R. Abr. 78. (b) 1. Sid. 144. cont. 2. R. Ab. 78. (c) Owen 113. Moor 470. C. Eliz. 581. (d) Raym. 681. 1. Keb. 451. 465. (e) 2. R. Abr. 78. (f) C. Eliz. 78. 1. Keb. 508. Moor 247. (g) 1. Sid. 144.

Sett. 12. It was formerly holden that a man might be indicted for a slander of the justice of the nation, by reflecting on a sentence given in any court ecclesiastical or temporal; whether directly, as where one said that such a sentence given by the high commission court was against law; or obliquely, as where one said that such a sentence was just, but that the testimonies on which it was founded were false, or the affidavits equivocating. 2. R. Abr. 78. 1. Roll. 245.

Sett. 13. But it seems the better opinion of this day, that a man cannot be indicted for any scandalous or contemptuous words spoken of or to such officers, not being in the actual execution of their office; for such an offence seems rather to proceed from ill breeding than a contempt of the government; and though it may be a cause to bind a man to his good behaviour, yet it does not seem to be of such consequence as to be a sufficient ground for a public prosecution, as for an offence against the common peace, &c. Hob. 102. Moor 819. 1. Ven. 10.

And agreeable hereto it hath been resolved, that a man shall not be indicted for saying, that "whenever a burghers of such a town puts on his gown, *Satan* enters into him; (b)—or, that "the mayor and aldermen of such a town are as great villains as any that rob on the highway;" (i)—or, that "the justices of peace understand no more of the statutes of excise than this jug, nor one of twenty of the parliament-men who made them;" (k)—or, that "such a justice of peace is a fool, an ass, and a coxcomb, for making such a warrant, and understands no more law than a slickhill; (l)—or, that "he is not fit to be a justice of peace, for that he will do right or wrong according as his affections lead him;" (m)—or, that "such an order is a numscul order, and that the justice deserves to be hanged who made it;" (n)—or, that "such a justice of peace is a forsworn wretch, and that he will fling his purse at him;" (o)—or for saying to a mayor of a town, (b) 1. Mod. 35. 2. Keb. 594. (i) 5. Mod. 203. (k) 1. Keb. 494. 5. Mod. 204. 2. Ven. 16. (l) Q. v. Wrightson, Salk. 698. (m) Q. v. Soley, Salk. 698. (n) Q. v. Leagley. (o) Q. v. Broxham.

town, "You MR. MAYOR, I do not care a fart for you;
 (a) 5. Mod. 124. "you MR. MAYOR, are a rogue and a rascal;" (a)—or for
 Salk. 697. saying, that "the justices of peace have nothing to do
 (b) 1. Ven. 10. "with the excise." (b)

Sett. 14. And not only those who disturb the administration of justice by direct contempts offered to the king's courts, but also all such as are guilty of any injurious treatment of those persons who are under the more immediate protection of those courts, are highly punishable by fine and imprisonment; as if a man assault or threaten his adversary for suing him, or a counsellor or attorney for being employed against him, or a juror for giving a verdict against him, or a gaoler for keeping a prisoner in safe custody.

Sett. 15. Also all who endeavour to stifle the truth, and prevent the due execution of justice, are highly punishable; as those who being examined before the privy council concerning their knowledge of a crime whereof a third person is accused, disclose what passed in such examination, in order to suppress a farther discovery; and also all those who dissuade, or but endeavour to dissuade a witness from giving evidence against a person indicted, &c. or who advise a prisoner to stand mute on his arraignment, &c. And it was anciently holden, that if one of the grand inquest discovered to any person indicted the evidence against them, he is an accessory to the offence, whether treason or felony; and at this day it is agreed, that he is guilty of a high misdemeanour, punishable by fine and imprisonment.

CHAPTER THE TWENTY-SECOND,

OF CONTEMPTS

AGAINST

THE KING'S PREROGATIVE.

CONTEMPTS against the king's prerogative are of so various a nature, that they cannot well be reduced to any certain heads. However, the principal of them seem to come under the following particulars: **FIRST**, Refusing to assist the king for the good of the publick. **SECONDLY**, Preferring the interests of a foreign prince to that of our own. **THIRDLY**, Disobeying the king's lawful commands or prohibitions.

SECT. 2. **FIRST** therefore, it is a high offence for any subject to deny the king that assistance for the good of the publick, either in his councils or wars, which by the law he is bound to give him; as for a peer not to (a) come to the parliament at the day of summons, or to (b) depart from thence without the king's licence; or for a (c) privy counsellor to refuse to give his advice on an affair of state; or for any (d) private subject to refuse to serve the king in person if he be able, or to find another if he be not able, in the defence of the realm, against rebels and foreign invaders; or, as some say, to refuse to serve the king for pay in his wars abroad.

(a) Moor 778. Noy. 102.
(b) S. P. C. 38. F. Cor. 161.
(c) 2. R. Abr. 211.
(d) 2. R. Abr. 165. B. Tenure 44. 73.
1. Ed. 3. c. 5.
18. Ed. 3. c. 7.
25. Ed. 3. c. 8.
4. H. 4. c. 13.
11. H. 7. c. 1. & 18.

SECT. 3. **SECONDLY**, It is so high an offence to prefer the interest of a *foreign prince* to that of our own, that it is criminal to do any thing which may but incline a man so to do; as to receive a pension from a foreign prince without the leave of our king.

Vide ante, ch. 18. f.

SECT. 4. **THIRDLY**, It is also a high crime to disobey the king's lawful commands or prohibitions; as by obstinately refusing obedience to his writs; or contemning a summons from his council to appear before them; or not answering such questions in relation to a matter wherein the interest of the state is concerned, as shall be proposed by the privy council; or refusing to give evidence to a grand jury concerning a crime (for which (e) the court may impose an immediate fine); or not returning from beyond sea upon the king's letters to that purpose; for which the offender's lands shall be seized till he return (and when he does re-

(e) Salk. 278.
Dyer 176. 128.
Moor 109. 779.
Lane 43.
3. Inst. 179.
Sav. 7. 8.
2. R. Abr. 208.
F. N. B. 85.
1. Cha. Ca. 116.
4. Comm. 122.
1. Comm. 266.

turn he shall be fined), or assembling at a *tournament* against the king's express prohibition; or going beyond sea against the king's will expressly signified, either by the writ *ne exteat regnum* (which may be directed as well to a *layman* as to a *clergyman*, and on the suggestion of a *private* as well as of a *publick* matter), or under the great or privy seal or signet, or by proclamation.

C. Eliz. 655. Sect. 5. Also every contempt of a statute is indictable, B. 2. c. 26. f. 2. if no other punishment be limited.

To the foregoing contempts against the king's prerogative may be added neglecting to join the *posse comitatus*, or power of the county, being thereunto required by the sheriff or justices according to the statute 2. Hen. 5. c. 8. which is a duty incumbent upon all that are fifteen years of age, under the degree of nobility, and able to travel.

1. Comm. 134. Lamb. Eir. 315.

CHAPTER THE TWENTY-THIRD.

OF CONTEMPTS

AGAINST

THE KING'S PERSON OR GOVERNMENT.

ALL contempts against the king's person or government are very highly criminal, and punishable with fine and imprisonment, and sometimes with the pillory, by the discretion of the judges, upon consideration of all the circumstances of the case. 4. Comm. 123.

But inasmuch as it is generally obvious to common sense, in what cases and to what degree a man is guilty of this offence, and it would be endless to enumerate all the particulars, I shall content myself with glancing at some of the most general heads ; as,

Sett. 1. **FIRST**, The charging the government with oppression or weak administration ; as by saying, " that merchants are screwed up here in *England* more than in *Turkey* ; " or, that " it is a good world when beggarly priests are made " lords, &c." C. Car. 168. 2. Keb. 336.

Sett. 2. **SECONDLY**, The doing an act which impliedly encourages rebellion ; as by absolving persons at the gallows, who, being condemned for high treason, shew no signs of repentance, but persist in justifying the fact ; or by drinking to the pious memory of a person executed for high treason. 3. Mod. 52. 5. Mod. 363.

Sett. 3. **THIRDLY**, Endeavouring to frighten the king into a change of his measures with threats of the uneasiness of his subjects ; as by subscribing a petition to him, in which it is intimated, that if it be denied, many thousands will be discontented, &c. C. Jac. 37. Moor 756. Noy 108.

Sett. 4. **FOURTHLY**, Spreading false rumours concerning the king's intentions ; as that he designs to grant a toleration to Papists, &c. C. Jac. 38. Vide the case of Alexander Scott, for publishing false news, O. B. June Sessions 1778. No. 504.

Sett. 5. **FIFTHLY**, Charging him with a breach of his coronation oath. Noy 105.

C. Car. 117,
&c.

Sect. 6. SIXTHLY, Speaking contemptuously of him; as by cursing him, &c. or giving out that he wants wisdom, valour, or steadiness; or, in general, doing any thing which may lessen him in the esteem of his subjects; weaken his government; or raise jealousies between him and his people.

1. Sid. 143.
For other con-
tempt against
the king's
person and
government,

Sect. 7. Also it is said to be an offence, for which a man may be indicted, to refuse in a foreign port to pay the usual customs, because it may cause a breach between our king and the king of the country.

vide Skin. 633. 1. Black. 37.

CHAPTER THE TWENTY-FOURTH,

OF CONTEMPTS

AGAINST

THE KING'S TITLE.

CONTEMPTS against the king's title are of two kinds:—**FIRST**, Denying his *title*.—**SECONDLY**, Refusing to take *the oaths* required by law for the support of his government.

Señt. 1. The first offence of this kind, *viz.* that of denying the king's title, hath by some been carried so high as to be adjudged an *overt act* of compassing his death. However, it is certainly most highly criminal, and punishable with fine and imprisonment, and also such infamous corporal punishment, as to the discretion of the court shall seem proper, according to the heinousness of the crime and the circumstances of the parties. As if a man in writing or discourse shall maintain that the king is an usurper; or that another hath a better title to **THE CROWN**, &c. For such like insinuations manifestly tend to raise tumults and disorders in the state, and to alienate the affections of the people from the prince, and incline them to favour the pretensions of another; and it is highly presumptuous for private persons to intermeddle with matters of so high a nature; and it will be impossible to preserve the peace of a government, unless subjects will quietly submit themselves to those whom Providence has placed over them, and prefer the publick good to their own private inclinations and opinions. For otherwise, whenever the title to the crown shall happen to be contested, it will be impossible to end the difference without perpetual civil broils and dissensions, and the prince who prevails will be tempted to esteem those of the contrary party rather as enemies than subjects, if he find them ready and desirous to lay hold of all opportunities to disturb his government, and shake off their forced obedience. And since there is no tribunal but that of Heaven to which princes can appeal for the decision of their titles, when that seems so far to have declared in favour of one as to give him quiet possession of the throne, the publick peace, which is the end of all government, requires a dutiful submission to him; and it is the highest madness to give up that ease and security which we may enjoy from a peaceful obedience, in exchange for that disorder, uncertainty, and bloodshed, which cannot but be expected from an attempt to wrest the sceptre out of the hands of our prince; and it is the highest ingratitude to make no other return but disloy-

Yelv. 107. 193.
2. Roll. 90.
Palm. 424.
4. Comm. 123,
124.

alty.

alty and rebellion, for all the happiness we can enjoy under a just administration; and it is the greatest of absurdities to think that the good of the community, for the sake of which all government was instituted, ought not to be preferred before the disputed title of a particular person or family. All we can desire from government is the secure enjoyment of what we may call our own, and whether this or that competitor to the crown be the instrument of this happiness to us, seems little to concern us. Let the title of one out of possession of THE THRONE be never so plausible, it must have its original foundation from some positive law; which, when it cannot take effect without involving a nation in discord and confusion, the avoiding whereof is the very end of all laws, it must give way to the public necessity of the state; for there can be no human institution whatsoever but must be limited by this implicit reserve from the first principles of reason, that wherever the execution of it shall be absolutely inconsistent with the happiness of the people for whose sake it was ordained, it ought so far to be suspended.

(a) See ante
ch. 17. sect. 11.
21. seq.
Comm. 123.

SECT. 2. For this and many other such like reasons the law has always had a most tender regard for the security of the prince in possession of THE CROWN; and as it has made it high treason to compass his death, &c. (a), so it hath also made it highly penal in an inferior degree to disturb or disquiet his government.

As to THE SECOND kind of offences of this nature, viz. That of refusing to take the oaths required by law for the support of the king's government, I shall consider—FIRST, The offence of refusing the oaths required for this purpose by the common law.—SECONDLY, The offence of refusing the oaths required by statute.

Finch 241,
§ 42.
2. Inst. 73.
1. Hale 64. 71.
2. Kcb. 314.

1. Comm. 367.
4. Comm. 270.
423.

SECT. 3. As to THE FIRST PARTICULAR, it seems to be a high contempt at the common law to refuse to take the oath of allegiance to the king, which all laymen above the age of twelve years are bound to take at the tourn or court-leet, &c. And surely nothing can be more unreasonable than to deny the king whose government we are happy under, all proper assurances of our fidelity to him; for how can we expect to enjoy the privileges of subjects from one to whom we refuse to acknowledge ourselves subjects, or hope for protection from one whom we provoke to esteem us as his enemies, or blame that government for treating us as mal-contents to which we give so just a cause to suspect our fidelity? If we consult THE LAW OF GOD, that will tell us, that "the powers that be are ordained of God." If we will

will hear THE VOICE OF REASON, that will convince us, that not only the peace and safety of the community, but also our own preservation, requires us to pay a dutiful obedience to those who govern us; and can we think it unlawful to engage ourselves to do what it is our duty to do? If we will consult THE PRACTICE OF ALL NATIONS, that will shew us, that even conquest, which is the weakest of all titles, has always been esteemed to give the conqueror such a right to the obedience of the conquered, that upon his taking them into his protection, they have in all ages been ready to promise a reciprocal obedience. And if we will consult OUR OWN LAWS, we shall find them to direct us to pay our allegiance to the king who governs us, as has been fully proved in the chapter of high treason.

As to THE SECOND PARTICULAR, viz. That of refusing the oaths required by statute for the support of the government, I shall consider,—FIRST, The offence of refusing the oaths of *allegiance* and *supremacy*.—SECONDLY, The offence of refusing the oath of *abjuration*.

Self. 4. As to THE FIRST of these offences, viz. That of refusing the oaths of *allegiance* and *supremacy*, which since THE REFORMATION OF RELIGION have been thought necessary to be required from all persons, especially from those who are intrusted with an office, in order to secure our princes from the intrigues of popes, who have often taken upon them to dispense with oaths of allegiance made to such princes whom they are pleased to call heretics, and to persuade the people that they may lawfully depose those who have so far incurred the displeasure of the bishop of Rome as to be excommunicated by him, it having been shewn already under what penalties officers are bound to take the said oaths (a), and how far all persons whatsoever are compellable to take them under pain of incurring a *præmunire* (b), I shall only take notice in this place of the method of proceeding on 1. Will. & Mar. c. 8. by which it is enacted, “ That persons refusing the said oaths, being tendered to them by persons lawfully authorized to tender the same, shall be committed by the persons making such a tender for three months, unless they shall pay such sum, not exceeding forty shillings, as the persons who shall make such tender shall require of them; and if they refuse again at the end of the three months, that they shall be imprisoned six months, or pay a sum not above ten or under five pounds, and also find sureties for their good behaviour and appearance at the next assizes, where if they refuse the said oaths, they shall be incapable of any office, and continue bound to their good behaviour; and if they

1. Comm. 368.
2. Inst. 121.
1. Hale 64.
4. Comm. 115.
(a) Ante ch. 8.
(b) Ante ch. 19. sect. 27.
&c.

“ refuse

(a) Ante p. "refuse THE DECLARATION mentioned in 25. Car. 2. c. 2.
pl. " (a) they shall suffer as *Papish recusants* convicted."

Sec. 5. It seemed to be the intention of this statute to give the government an election to proceed either on the mild method therein prescribed, or the more severe one appointed by the former laws, according to the circumstances of the case, and quality of the offender, &c.

† But now, by 31. Geo. 3. c. 32. s. 18. "No person shall
" be summoned to take the oath of supremacy and allegi-
" ance, and make the declaration as required by 1. Will.
" & Mary, c. 8. the 1. Geo. 1. sesh. 2. c. 13. and 25. Car.
" 2. c. 2. or be prosecuted for not obeying such sum-
" mons.

1, Comm. 368. *Sec. 6.* As to THE SECOND OFFENCE of this kind, *viz.*
That of refusing the *oath of abjuration*, the same depends on
those laws which the nation has been of late under a ne-
cessity of establishing, by adding a new limitation to the
law relating to the succession of THE CROWN, excluding all
Papists from a possibility of inheriting it; who, if they be
true to their engagements to their own religion, cannot but
be false to those they may make to ours, and can never be
expected to execute those laws, which they cannot but
think void, as being repugnant to the laws of GOD; or to
defend that faith which they think damnable; or to observe
those oaths which seem to them to have been ordained for
the support of irreligion. And from these considerations
they have been disabled from inheriting THE CROWN, it
seeming of absolute necessity in our present circumstances,
for the good of the community, to make such an alteration
in law, which like all other human laws depending merely
on the policy of men, seems to have nothing in it so sa-
cred as to oblige the people unalterably to abide by it to
the hazard of their common safety, peace and happiness, for
the sake whereof it was at first ordained. For surely there
cannot be so much danger to the common good from such
an alteration, as must needs follow from the government of
a prince whose conscience is under the influence of those
who are implacable enemies to the religion of his country,
and who thinks himself bound by his duty to God and his
church to promote that interest, which his people think
themselves under the like obligations to oppose. From
which unhappy circumstances nothing can be expected but
endless factions, discords, irreconcilable jealousies and dis-
trusts between prince and people, which, if they break not
into an open rupture, will at least be attended with such
convulsions and uneasinesses, as render a state of government
scarce

scarce one degree more secure than a state of anarchy and confusion.

Seet. 7. For the remedying of such like inconveniences, 1. Comm. 368. it having been thought proper to exclude all *Papists* from the crown, it was likewise thought expedient, by the statute 13. Will 3. c. 6. and 1. Geo. 1. st. 2. c. 13. to secure the present settlement, by obliging all persons in *public offices* and *employment*: (a) to take the oaths of allegiance and supremacy, to make the declaration, and also to take the *oath of abjuration*, or otherwise it enacts that "they shall be *ipso facto* adjudged incapable and disabled in law to have, occupy, or enjoy the said offices, &c. and if they shall by themselves, or deputy or trustee, execute any the said offices, &c. and shall be thereof convicted, &c. they shall be disabled to prosecute any suit at law or equity, or to be guardians, executors, or administrators, or capable of any legacy or deed of gift, or to be in any office within this realm, or to vote at any election for members of parliament, and shall forfeit FIVE HUNDRED POUNDS, &c."

(a) See ante, ch. 8. sect. 102 and 11.

Seet. 8. And by 1. Geo. 1. st. 2. c. 13. s. 12. "If any member of either university shall neglect to take and subscribe the said oaths according to the intent of the said act, or to produce a certificate thereof, under the hand of some proper officer of the respective court, and cause the same to be entered in the register of the proper college or hall within one month after his having taken and subscribed the said oaths; and if the persons in whom the right of election of such member shall be, do neglect to elect some fitting person in his stead within twelve months, &c. that then the king may, under the great seal or sign manual, nominate some fitting person, qualified according to the local statutes of such college, &c. and if the head of any college, &c. shall neglect to admit such nominee by the space of ten days after such admission shall be demanded of him, that then the local visitor shall admit the said nominee; and if such visitor shall neglect or refuse to admit such person within the space of one month after the same shall be demanded, that then the court of king's bench may issue a writ of *mandamus* to such visitor to admit such nominee, &c."

If the heads, &c. of any of the colleges in Oxford or Cambridge neglect to take the oath, the king may nominate.

Seet. 9. By 1. Geo. 1. st. 2. c. 13. s. 16. "That no peer shall vote or make his proxy, or sit in the house of peers during any debate, and that no member of the house of commons shall vote or sit during any debate in the said house after the speaker is chosen, until he shall have taken

No member of parliament shall vote till he has taken the oaths.

“ taken the said oaths, &c. under pain of the disabilities
 “ and forfeitures abovementioned, &c.”

Form of the
 oath of abju-
 ration.

Secd. 10. By 6. Geo. 3. c. 53. reciting the above sta-
 tutes of 1. Geo. 1. c. 13. and 5. Geo. 1. c. 29. the oath
 of abjuration shall be administered in manner and form as
 follows: (that is to say) “ I *A. B.* do truly and sincerely
 “ acknowledge, profess, testify, and declare, in my con-
 “ science, before God and the world, that our sovereign
 “ lord KING GEORGE is lawful and rightful king of this
 “ realm, and all other his majesty’s dominions and countries
 “ thereunto belonging. And I do solemnly and sincerely
 “ declare, that I do believe, in my conscience, that not
 “ any of the descendants of the person who pretended to
 “ be *Prince of Wales* during the life of the late king
 “ *James the Second*, and since his decease pretended to be,
 “ and took upon himself the stile and title of king of *En-*
 “ *gland* by the name of *James the Third*, or of *Scotland*
 “ by the name of *James the Eighth*, or the stile and title
 “ of king of *Great Britain*, hath any right or title whatso-
 “ ever to the crown of this realm, or any other the domi-
 “ nions thereunto belonging: and I do renounce, refuse,
 “ and abjure any allegiance or obedience to any of them.
 “ And I do swear, that I will bear faith and true allegiance
 “ to his Majesty KING GEORGE, and him will defend to
 “ the utmost of my power, against all traitorous conspi-
 “ racies and attempts whatsoever which shall be made
 “ against his person, crown, or dignity. And I will do
 “ my utmost endeavour to disclose and make known to his
 “ majesty, and his successors, all treasons and traitorous
 “ conspiracies which I shall know to be against him, or
 “ any of them. And I do faithfully promise, to the utmost
 “ of my power, to support, maintain, and defend the suc-
 “ cession of the crown against the descendants of the said
 “ *James*, and against all other persons whatsoever, which
 “ succession, by an act intituled, ‘ An Act for the further
 “ Limitation of the Crown, and better securing the Rights
 “ and Liberties of the Subject,’ is and stands limited to the
 “ *princess Sophia*, electress and duchess dowager of *Hano-*
 “ *ver*, and the heirs of her body being protestants. All
 “ these things I do plainly and sincerely acknowledge and
 “ swear, according to these express words by me spoken,
 “ and according to the plain common sense and under-
 “ standing of the same words, without any equivocation,
 “ mental evasion, or secret reservation whatsoever. And I
 “ do make this recognition, acknowledgment, abjuration,
 “ renunciation, and promise, heartily, willingly, and truly,
 “ upon the true faith of a Christian.”

And by 6. Geo. 3. c. 53. from and after the twenty-fourth day of *June* one thousand seven hundred and sixty-six, the assurance in the said first-mentioned act contained, shall be administered in the following manner and form: "I *A. B.* do, in the sincerity of my heart, assert, acknowledge, and declare, that his majesty KING GEORGE is the only lawful and undoubted sovereign of this realm, as well *de jure*, that is of right, king, as *de facto*, that is in the possession and exercise of the government. And therefore I do promise and swear, that I will with heart and hand, life and goods, maintain and defend his right, title, and government against the descendants of the person who pretended to be *Prince of Wales* during the life of the late king *James*, and, since his decease, pretended to be and took upon himself the stile and title of king of *England* by the name of *James the Third*, or of *Scotland* by the name of *James the Eighth*, or the stile and title of king of *Great Britain*, and their adherents, and all other enemies who, either by open or secret attempts, shall disturb or disquiet his majesty in the possession and-exercise thereof."

Assurance in first recited act, to be administered in the following form.

And by 6. Geo. 3. c. 57. all and every person and persons who are enjoined and required to administer, take, or subscribe the oath of abjuration, and the assurance in the said above-mentioned acts contained, shall respectively administer, take, and subscribe the oath of abjuration, and subscribe the assurance, according to the form herein set down and prescribed in such courts, within such time limited, in such manner, and with due observance of the same requisites, and with benefit of the same savings, provisions, and indemnities, as by the said acts above-mentioned, or by any other acts, or any part of them, now subsisting, are directed and enacted; and in case of neglect or refusal, he or they shall be subject and liable to the same penalties and disabilities as by the laws and statutes aforesaid are enacted.

To be administered, &c. within the time and in the manner, &c.

Somewhat similar to the oaths required by THE CORPORATION and TEST ACTS, and the acts abovementioned, are the ceremonies and oaths required previous to being naturalized. 4. Comm 58. for which see 1. Jac. 1. c. 2. 7. Ann. c. 5. 10. Ann. c. 5. 4. Geo. 2. c. 21. 20. Geo. 2. c. 44. For the declaration against popery, vide 30. Car. 2. st. 2. c. 1.—For the oaths to be taken by peers of Scotland, and by privy counsellors, vide 6. Ann. c. 23. 1. Geo. 1. c. 4.—For the Moravian affirmation, 22. Geo. 2. c. 30.—Quakers profession of belief, 1. Will. 3. c. 18.—Quakers affirmation, 8. Geo. 1. c. 6. and for the cases in which it is allowed to be taken, 5. Mod. 403. Str. 441. 527. 856. 872, 1219.

CHAPTER THE TWENTY-FIFTH.

OF FELONY.

OFFENCES more immediately against the subject are either capital or not capital.—The capital offences are either by the common law, or by statute.

Vide Spelm.
Gloss. verb.
Felonia 214.
Co. Lit. 391.

Sec. 1. Those by the common law come generally under the title of FELONY, which *ex vi termini* signifies *quodlibet crimen felleo animo perpetratum*, and can be expressed by no periphrasis, or word equivalent, without the word *felonice*.

3. H. 7. 10.
3. Inst. 15.
4. Comm. 94.
97.

Sec. 2. FELONY is said to be included in *high treason*, and consequently a pardon of felony discharges an indictment of high treason, if it want the word *proditorie*.

(a) Foster.

(b) Bract. 1.
c. 4.
S.P.C. 17. 27.

(c) 1. Sid. 230,
231.
Kely. 24.

(d) Bacon's
case, 1. Lev.

146. Rex v. Cooper. 5. Mod. 206.

Sec. 3. It is always accompanied with an evil intention, and therefore shall not be imputed to a mere mistake or mis-animadversion; as where persons break open a door in order to execute a warrant, which will not justify such a proceeding (a); *affectio enim tua nomen imponit operi tuo*; item *crimen non contrahitur nisi necendi voluntas intercedat* (b). But the bare intention to commit a felony is so very criminal; that, at the common law, it was punishable as felony, where it missed its effect through some accident no way lessening the guilt of the offender (c). But it seems agreed at this day, that felony shall not be imputed to a bare intention to commit it; yet it is certain that the party may be very severely fined for such an intention (d).

FELONY, in the general acceptation of our English law, comprizes every species of crime which occasioned at common law the forfeiture of land or goods. This most frequently happens in those crimes for which a capital punishment either is or was liable to be inflicted. All offences therefore now capital are in some degree or other felony: and this is likewise the case with some other offences which are not punished with death; as suicide, where the party is already dead; homicide, by chance medley or in self-defence; and petit larceny, or pilfering; all which are (strictly speaking) felonies, as they subject the committers of them to forfeitures. The definition of felony, therefore, seems to be, "an offence which occasions a total forfeiture of either lands or goods, or both, at the common law; and to which capital or other punishment may be superadded according to the degree of guilt." But felony may be without inflicting capital punishment, as in the case instanced of self-murder, excusable homicide, and petty larceny; and it is possible that capital punishments may be inflicted, and yet the offence be no felony; as in the case of heresy by the common law; which, though capital, never worked any forfeiture of lands or goods; (3. Inst. 43.) an inseparable incident to felony. And of the same nature is the punishment of standing mute, without pleading to an indictment; which is capital but without any forfeiture, and therefore such standing mute is no felony. In short, the true criterion of felony is forfeiture. The idea of felony is indeed so generally connected with that of capital punishment, that we find it hard to separate them; and to this usage the interpretations of the law do now conform. Therefore, if a statute makes any new offence felony, the law implies that it shall be punished with death, as well as with forfeiture, unless the offender prays the benefit of clergy, which all felons are intitled once to have, unless the same is expressly taken away by statute. 4. Comm. 94. to 99:

CHAPTER THE TWENTY-SIXTH.

OF CASUAL DEATH AND OF DEODANDS.

CAPITAL OFFENCES at common law more immediately against the subject, are of three principal kinds: **FIRST**, Such as are committed against his *life*: **SECONDLY**, Such as are against his *goods*: **THIRDLY**, Such as are against his *habitation*.

SECT. 1. There is another mixed kind of capital offences, Book 2d. c. 17. which consists in the hindrance of the due process of public justice, which I shall consider in the second book, wherein I shall treat of the means of bringing offenders to their due punishment.

SECT. 2. **OFFENCES** against the *life* of a man come under Braet. l. 3. c. 4. the general name of *homicide*, which in our law signifies the killing of a man by a man.

SECT. 3. But before I treat hereof, it may not be improper to consider the killing of a man merely *per infortunium*, 1. Hale 471, 472. occasioned by some animal or thing without life, without the default or procurement of another man; as where one is killed by a fall from a horse or cart, &c. which though it be not properly *homicide*, nor punishable as a crime, yet is taken notice of by the law, as far as the nature of the thing will bear, in order to raise the greater abhorrence of *murder*; and the unhappy instrument or occasion of such death is called a **DEODAND**, and is forfeited to the king, in order to be disposed of in *pious uses* by the KING's **ALMONER**; as also are all such weapons whereby one man kills another. 1. Hale 471, 472. Pult. 125. 5. Co. 110. 3. Inst. 57, 58. Crom. 31. 1. Hale 344, 19.

SECT. 4. It seems clearly settled, that a horse, &c. killing S. P. C. 21. 3. Inst. 58. Sum. 34. Pult. 125. Dalt. c. 97. 2. Keb. 719. 806. an infant within the age of discretion, are as much forfeited as if he were of age: but formerly it was holden, that a horse or cart, *by a fall from* which an infant was slain, were not forfeited, perhaps for this reason (1), because the mis-

(1) The forfeiture of deodands originated in the blind days of popery and superstition. They were designed to purchase, by propitiatory masses, an expiation for the souls of such as were snatched away by untimely death. But the presumed innocence of childhood rendered such atonement unnecessary. Therefore no deodand is due, where an infant under the age of discretion is killed by a fall from any thing that is not in motion, 1. Comm. 300. But if the instrument move to the death either of an infant or an adult, it is forfeited, on an inquisition found, as a deodand. 3. Inst. 57. 1. Hale 422.

fortune might rather seem owing to the indiscretion of the infant than to any default in the horse, &c. But this distinction has not been allowed of late; for the law does not ground the forfeiture on any default in the things forfeited, since it extends it to things without life, to which it is plain that no manner of fault can be imputed.

S. P. C. 20.
Pult. 124.
1. Sid 206, 207.
1. Lev. 136.
Rayn. 97.
6. Mod. 187.

Secl. 5. Also, by the opinion of our ancient authors, things *fixed to a freehold*, as the wheel of a mill, a bell hanging in a steeple, &c. may be deodands; but by the latter resolutions they cannot, unless they were severed before the accident happened.

S. P. C. 20, 21.
Pult. 124, 125.
3. Inst. 58.
1. Hale 422.
C. Jac. 483.
2. Roll. 23.
Popham 136.
Salk. 220.
Str. 61.
Co. Lit. 53.
283.

(2) *Quere* if it had appeared that the horse had thrown him.

Sayer 249.
F. Cor. 341.

Bracl. l. 3. c. 5.

Secl. 6. However, it is agreed by all, that a ship in salt water, whether in the open sea or within the body of a county, from which a man falls and is drowned, is not forfeited; because persons at sea are continually exposed to so many perils, that the law imputes such misfortunes happening there, rather to them than to the ship. Also it seems clear, that when a man riding on a horse over a river is drowned through the violence of the stream, the horse is not forfeited, because, not but that the waters caused his death (2), but it is said, that a ship by a fall from which a man is drowned in the fresh water shall be forfeited, but not the merchandize therein, because they no way contribute to his death. And by the same reason it seems, that if a man riding on the shafts of a waggon fall to the ground and break his neck, the horses and waggon only are forfeited, and not the loading, because it no way contributed to his death; for which cause, where a thing not in motion causes a man's death, that part thereof only which is the immediate cause is forfeited. As where one climbing upon the wheel of a cart while it stands still, falls from it and dies of the fall, the wheel only is forfeited; but if he had been killed by a bruise from one of the wheels being in motion, the loading also would have been forfeited, because the weight thereof made the hurt the greater; and it is a general rule, that wherever the thing which is the occasion of a man's death is in motion at the time, not only that part thereof which immediately wounds him, but all things which move together with it, and help to make the wound more dangerous, are forfeited also; for the rule is, *omnia quæque movent ad mortem sunt deodanda*.

S. P. C. 21.
Dalt. c. 97.
Plowd. 260.
Keilw. 68.

Secl. 7. In all these cases, if the party wounded die not of his wound within *a year and a day* after he receive it, there shall be nothing forfeited, for the law does not look on such a wound as the cause of a man's death, after which he lives so long; but if the party die within that time, the for-

forfeiture shall have relation to the wound given, and cannot be saved by any alienation or other act whatsoever in the mean time.

Sett. 8. However, nothing can be forfeited as a deodand, nor seized as such, till it be found by the coroner's inquest to have caused a man's death; but after such inquisition, the sheriff is answerable for the value of it, and may levy the same on the town where it fell, and therefore the inquest ought to find the value of it (3).

5. Co. 110.
Co. Lit. 115.
Dalt. c. 97.
S. P. C. 21.
Pult. 125.
See 4. Ed. 1.
de Offic. Co-
ronatoris.
1. Hale 418, 419.

(3) Upon inquisitions of this kind the jury generally find the value of the deodand to be as small as possible, and even confine that value, according to the circumstances of the case, to the very thing or part of the thing itself which caused the death, 2. Bac. Abr. 26. This practice the court of king's bench has impliedly sanctioned, by refusing to reform it on an application in favour of the crown or its grantee, Fos. 206. 2. Bar. K. B. 82. Nor can such an inquisition be taken by the grand jury on default of the coroner, 1. Burr. 19. (and when taken by the coroner, it may be moved and traversed, 1. Burr. 20.. 2. Hale 416.) because it is transacted in secret, taken *ex parte*, and intended as the platform of an odious superstitious claim, 4. Inst. 195. repugnant to the principles of sound reason and true policy, Foster 266.

CHAPTER THE TWENTY-SEVENTH,

OF FELO DE SE.

HOMICIDE properly so called, is either against a man's own life or that of another.

In treating of homicide against a man's own life, I shall consider, **FIRST**, In what cases a man shall be said to be a *felo de se*: **SECONDLY**, What he shall forfeit for this offence.

As to **THE FIRST POINT**, viz. In what cases a man shall be said *felo de se*.

SECT. 1. I shall take it for granted that, in this as well as in all other felonies, the offender ought to be of the age of discretion, and *compos mentis*; and therefore that an infant killing himself under the age of discretion, or a lunatic during his lunacy, cannot be a *felo de se*.

1. Hale 411.
Crom. 30, 31.
Dalt. c. 92.
3. Inst. 54.

SECT. 2. But here I cannot but take notice of a strange notion which has unaccountably prevailed of late, that every one who kills himself must be *non compos* of course; for it is said to be impossible that a man in his senses should do a thing so contrary to nature and all sense and reason.

3. Mod. 100.

Plow. 261.
Comb. 2, 3.

SECT. 3. If this argument be good, *self-murder* can be no crime, for a madman can be guilty of none: but it is wonderful that the repugnancy to nature and reason, which is the highest aggravation of this offence, should be thought to make it impossible to be any crime at all, which cannot but be the necessary consequence of this position, that none but a madman can be guilty of it. May it not with as much reason be argued, that the murder of a child or of a parent is against nature and reason, and consequently that no man in his senses can commit it? But has a man therefore no use of his reason, because he acts against right reason? Why may not the passions of grief and discontent tempt a man knowingly to act against the principles of nature and reason in this case, as those of love, hatred, and revenge, and such like, are too well known to do in others?

SECT. 4. However, our laws have always had such an abhorrence of this crime, that not only he who kills himself with

with a deliberate and direct purpose of so doing, but also in some cases he who maliciously attempts to kill another, and in pursuance of such attempt unwillingly kills himself, shall be adjudged in the eye of the law a *felo de se*. For wherever death is caused by an act done with a murderous intent, it makes the offender a murderer; and therefore, if *A.* discharge a gun at *B.* with an intent to kill him, and the gun breaks and kills *A.*; or if *A.* strike *B.* to the ground, and then hastily falling upon him wound himself with a knife which *B.* happens to have in his hand and die, in both these cases *A.* is *felo de se*, for he is the only agent.

Dalt. c. 144.
44. Aff. 55.
B. Cor. 12. 14.
3. Inst. p. 54.

SECT. 5. But if *B.*, being so assaulted, had been driven to the wall, and holden up a pitch-fork or knife, standing in his defence, and *A.* had hastily run upon the same and been slain, *B.* should be adjudged to kill him in his own defence. And for the same reason perhaps in the case above, if *B.* after he had fallen to the ground, had holden up a knife or sword in his defence, and *A.* had fallen thereon and been slain, *B.* should be adjudged to kill him *se defendendo*; for here *B.* exerts his strength in his own defence, and by so doing occasions the mortal wound received by *A.*

Staut. 16.
Pult. 119.
Vide 1. Hale
413. & 493.
upon this case;
which he con-
tends is misre-
presented both
by Dalton and
Coke, and that
it was adjudg-
ed HOMICIDE
per infortuni-
um.

SECT. 6. He who kills another upon his desire or command, is, in the judgment of the law, as much a murderer as if he had done it merely of his own head, and the person killed is not looked upon as a *felo de se*, inasmuch as his assent was merely void, as being against the laws of God and man: but where two persons agree to die together, and one of them at the persuasion of the other buys ratibane, and mixes it in a potion, and both drink of it, and he who bought and made the potion survives by using proper remedies, and the other dies, perhaps it is the better opinion, that he who dies shall be adjudged a *felo de se*, because all that happened was originally owing to his own wicked purpose, and the other only put it in his power to execute it in that particular manner.

Keilw. 136.

Moor 754

As to THE SECOND POINT; viz. What such an offender shall forfeit.

SECT. 7. It seems clear that he shall forfeit all chattels, real or personal, which he hath in his own right, and also all such chattels real whereof he is possessed either jointly with his wife, or in her right; and also all bonds and other

S. P. C. 188,
189, 262, 263.
1 Hale 413.
Finch 216.
Crom. 31.

3. Inst. 55. 19. H. 6. 47. 8. E. 4. 24. Raym. 7. Plow. 243. 259; Comm. 190. 193.

262, 323.

personal things in action belonging solely to himself; and also all personal things in action, and, as some say, entire chattels in possession, to which he was entitled jointly with another, on any account except that of merchandize: but it is said, that he shall forfeit a moiety only of such joint chattels as may be severed, and nothing at all of what he was possessed of as executor or administrator.

1. Hale 413. Sect. 8. However, the blood of a *felo de se* is not corrupted, nor his lands of inheritance forfeited, nor his wife barred of her dower.

5. Co. 110. Sect. 9. Also no part of the personal estate is vested in the king, before the self murder is found by some inquisition; and consequently the forfeiture thereof is saved by a pardon of the offence before such finding.
3. Inst. 54. 1. Saund. 362. 1. Hale 414. 1. Sid. 150. 162. 2. Mod. 53. 3. Mod. 100. 241, 242. Con. 1. Lev. 8. 1. Keb. 67, 68. 4. Comm. 190.

Plow. 260. Sect. 10. But if there be no such pardon, the whole is forfeited immediately after such inquisition, from the time such mortal wound was given, and all intermediate alienations are avoided.
5. Co. 110. 1. Hale 412. 4. Com. 190.

3. Inst. 55. Sect. 11. And such inquisitions ought to be by the coroner *super visum corporis*, if the body can be found; and an inquisition so taken, as some say, cannot be traversed.
47. Ed. 3. 76. See B. 2. c. 9. f. 52. 1. Hale 414 to 417. Far. 16. Salk. 190. 377. Carth. 72. Skin. 45. Stamf. 183. 3. Mod. 80. 238. 1. Mod. 82. 2. Keb. 859. 1. Vent. 181, 182. 2. Vent. 38. 2. Jones 198. 2. Hale 59. Lev. 8. Sid. 150.

3. Inst. 55. Sect. 12. But if the body cannot be found so that the coroner, who has authority only *super visum corporis*, cannot proceed, the inquiry may be by justices of peace, who by their commission have a general power to inquire of all felonies; or in the king's bench, if the felony were committed in the county where the said court sits; and such inquisitions are traversable by the executor, &c.
2. Lev. 141. 1. Hale 414. Carth. 73. 1. Burr. 18. 1. Freem. 420. 1. Roll. 217. 1. Sid. 101, 144.

Salk. 377. Sect. 13. Also all inquisitions of this offence, being in the nature of indictments, ought particularly and certainly to set forth the circumstances of the fact; as the particular manner of the wound, and that it was mortal, &c. and in the conclusion add, that the party in such manner murdered himself.
7. Mod. 16. 1. Mod. 82.

Sect. 14. Therefore if either the premises be insufficient, ^{2. Lev. 140, 152.} as if it be found that the party flung himself into the water, ^{3. Mod. 100.} *et sic seipsum emergit*, which is nonsense, because "*emerge*" ^{12. Mod. 112.} signifies only to rise out of the water: or if there be wanting the proper conclusion, *et sic seipsum mædravit*, the in- ^{Vide Salk. 377.}quisition is not good.

Sect. 15. Yet if it be full in substance, the coroner may ^{1. Sid. 225, 259.} be served with a rule to amend a defect in form. ^{3. Mod. 101.}

^{1. Keb. 907.} Fitzg. 6. See 1. Saund. 273. for process from THE CROWN-OFFICE on such an in-quisition against a debtor of a *felo de se*.

CHAPTER THE TWENTY-EIGHTH.

OF JUSTIFIABLE HOMICIDE.

HOMICIDE against the life of another either amounts to **FELONY**, or does not. That which amounts not to felony is either *justifiable*, and causes no forfeiture at all, or *excusable*, and causes the forfeiture of the party's goods.

Of JUSTIFIABLE HOMICIDE I shall premise these general rules.

Vid. sect. 22. *SECT. 1. Firstly*, It must be owing to some *unavoidable necessity* to which the person who kills another must be reduced without any manner of fault in himself.

2. Roll. 120. *SECT. 2. Secondly*, There must be no malice coloured under pretence of necessity; for wherever a person who kills another acts in truth upon malice, and takes occasion, from Mal. in Parc. the appearance of necessity, to execute his own private revenge, he is guilty of murder.

SECT. 3. Thirdly, According to the opinion of the old books (a), which in this respect seems to be contradicted by others more modern (b), it seems, that one may set forth a fact, amounting to justifiable homicide, in a special plea to an indictment or appeal of murder; and that the same being found true, he shall be dismissed, without being arraigned, or enforced to plead *not guilty*. And indeed it seems extremely hard, that a sheriff or judge who condemn or execute a criminal, &c. should be forced, on a frivolous prosecution, to hold up their hands at the bar for it, &c. But it is agreed, that no one can plead a fact amounting to homicide *se defendendo*, or by misadventure, but that, in such a case, the defendant must plead *not guilty*, and give the special matter in evidence: and it is also agreed, that where a special fact, amounting to justifiable homicide, is found by the jury, the party is to be dismissed, without being obliged to purchase any pardon, &c.

JUSTIFIABLE HOMICIDE is either of a public or of a private nature. Justifiable homicide of a *public nature*, is such as is occasioned by the due execution or advancement of public justice.—That of a *private nature* is such as happens

pens in the just defence of a man's person, house, or goods.

Of JUSTIFIABLE HOMICIDE in the due execution of *public justice*, the following rules must be observed.

Sec. 4. *First*, The judgment, by virtue whereof any person is put to death, must be given by one who has jurisdiction in the cause; for otherwise both judge and officer may be guilty of felony. Dalt. c. 98.
1. Hale 497.
10. Co. 76.
22. E. 4. 33.

Sec. 5. And therefore, if the court of common pleas give judgment on an appeal of death, or justices of peace on an indictment of treason, and award execution, which is executed, both the judges who give, and the officers who execute the sentence, are guilty of felony, because, these courts having no more jurisdiction over these crimes than mere private persons, their proceedings thereon are merely void, and without any foundation. 1. Hale 497.
500.
3. Inst. 48.
5. Co. 106.
Cro. Car. 98.
Moor 333.
4. Comm. 178.

Sec. 6. But if the justices of peace, on an indictment of trespass, arraign a man of felony, and condemn him, and he be executed, the justices only are guilty of felony, and not the officers who execute their sentence; for the justices had a jurisdiction over the offence, and their proceedings were irregular and erroneous only, but not void. Dalt. c. 98.
1. Hale 501.

Sec. 7. *Secondly*, The judgment must be executed by the lawful officer. Co. Lit. 128.

Sec. 8. Indeed it was formerly holden, that any one might as lawfully kill a person attainted of treason or felony as a wolf or other wild beast; and anciently a person condemned in an appeal of death was delivered to the relations of the deceased, in order to be executed by them. 2. Aff. 3.
S.P.C. 13. 196.
1. Hale 497.
11. H. 4. 12.
Plow. 306.
3. Inst. 131.

Sec. 9. But at this day it seems agreed, that if the judge who gives the sentence of death, and, *à fortiori*, if any private person execute the same, or if the proper officer himself do it without a lawful command, they are guilty of felony. 27. Aff. 41.
1. Hale 501.
B. App. 69.
Cor. 67. 197.
Co. Lit. 128.
Dalt. c. 98.

35. H. 6. 58. *Señ. 10. Thirdly*, The execution must be pursuant of,
 B. App. 5. and warranted by, the judgment, otherwise it is without
 S. P. C. 13. authority; and consequently if a sheriff behead a man where
 See B. 2. c. 51. it is no part of the sentence to cut off the head, he is guilty
 Finch 31. of felony (1).
 3. Inst. 52. 211.

1. Hale 454.
 501. 2. Hale 411. 4. St. Tr. 149. Foster 268.—(1) That is, if the officer va-
 rieth from the judgment of his own head and without warrant or the colour of autho-
 rity, but not if he is authorised by custom or by warrant from the crown. For al-
 though the king cannot by his prerogative vary the execution so as to aggravate the
 punishment beyond the intention of the law; yet it doth not follow, that he who may
 remit part of the judgment, or wholly pardon the offender, cannot mitigate his punish-
 ment with regard to the pain or infamy of it. Foster 267.

OF JUSTIFIABLE HOMICIDE in the due advancement of
 public justice, I shall consider,—FIRST, in relation to cri-
 minal,—SECONDLY, in relation to civil causes.

I. HOMICIDE in the advancement of public justice in *cri-
 minal causes* may be justified in several cases.

22. Aff. 55. *Señ. 11. First*, If a person, having actually committed
 B. Cor. 87. 89. a felony, will not suffer himself to be arrested, but stand on
 S. P. C. 13. his own defence, or fly, so that he cannot possibly be ap-
 3. Inst. 221. prehended alive by those who pursue him, whether private
 Dalt. c. 98. persons or public officers, with or without a warrant from
 Crom. 30. a magistrate, he may be lawfully slain by them.
 F. Cor. 192.
 258. 261.
 1. Hale 489. Foster 271. *Furem si aliter capi non posset, occidere permittunt.* Sternh.
 de jure Goib.

See authori-
 ties above
 cited.
 F. Cor. 179.
 261.
Señ. 12. Secondly, If an innocent person be indicted of
 a felony, where, in truth, no felony was committed, and
 will not suffer himself to be arrested by the officer who
 has a warrant for that purpose, he may lawfully be killed
 by him, if he cannot otherwise be taken; for there is a
 charge against him upon record, to which at his peril he is
 bound to answer.

1. Hale 481. *Señ. 13. Thirdly*, If a criminal; endeavouring to break
 494, 495, 496. the gaol, assault his gaoler, he may be lawfully killed by
 him in the affray.

Crom. 30. 158. *Señ. 14. Fourthly*, If those who are engaged in a riot,
 Staund. 13. or a forcible entry, or detainer, stand in their defence, and
 2. Inst. 52. continue the force in opposition to the command of a justice
 Poph. 121. of peace, &c. or resist such justice endeavouring to arrest
 them, the killing of them may be justified (a); and so per-
 haps may the killing of dangerous rioters by any private
 persons, who cannot otherwise suppress them or defend
 them-
 (a) See THE
 RIOT ACT,
 post. ch. 65.
 sect. 56.

themselves from them, inasmuch as every private person seems to be authorised by the law to arm himself for the purposes aforesaid.

Therefore if a stranger interpose to part combatants in an affray, giving notice to them of that intention, and they assault him, and in the struggle he should chance to kill, this would be *justifiable homicide*; for it is every man's duty to interpose for the preservation of the public peace, and for the prevention of mischief. Foster 272.

Sec. 15. Fifthly, If trespassers in a forest, chase, park, or warren, or any inclosed ground wherein deer are kept, will not render themselves to the keepers upon an HUE AND CRY made to stand to the king's peace, but fly from, or defend themselves against them, they may be slain by force of the statute *de malefactoribus in parcis*, 21. Ed. 1. ft. 2. and 3. and 4. Will. & Mary, c. 10. S. P. C. 13. Crom. 30. Dyer 326. 1. Hale 491. 9. St. Tr. 315.

Sec. 16. Sixthly, If either of the parties fighting in a combat allowed by law for the trial of some special cases, be slain, he who kills him is justified, and the death of the other is imputed to the just judgment of God, who is presumed to give the victory to him who fights in maintenance of the truth. Dalt. c. 98. Plow. 9. 3. Inst. 221. 37. H. 6. 21.

But in all these cases there must be an apparent necessity on the officer's side, that the party could not be arrested or apprehended; that the riot could not be suppressed; that the prisoners could not be kept in hold; that the deer-stealers could not but escape, unless such homicide were committed; otherwise without such absolute necessity it is not justifiable. 4. Comm. 180.

II. HOMICIDE in the advancement of justice in civil causes, may also be justified in some cases.

Sec. 17. As where a sheriff, &c. attempting to make a lawful arrest in a civil action, or to retake one who has been arrested and made his escape, is resisted by the party, and unavoidably kills him in the affray. 1. Roll. 189. Foster 270. 3. Inst. 56. Crom. 24. Dalt. c. 98. 1. Hale 494. 4. Comm. 180.

Sec. 18. And in such case the officer is not bound to give back, but may stand his ground and attack the party. Foster 292. Strange 497. 6. St. Tr. 195.

Sec. 19. But no private person of his own authority can arrest a man for a civil matter, as he may for felony, &c. Crom. 30.

Sec. 20. Neither can the sheriff himself lawfully kill those who barely fly from the execution of any civil process. 1. Hale 481. Post. 161. Foster 271.

Puff. L. of N. 455- *Of JUSTIFIABLE HOMICIDE* of a private nature, in the just defence of a man's person, house, or goods, I shall shew, **FIRST**, in what cases the killing of a wrong-doer may be justified by reason of such defence. **SECONDLY**, where the killing of an innocent person may be so justified.

24. H. 8. c. 5. *Sec't. 21.* **AND FIRST**, the killing of a wrong-doer, in the making of such defence, may be justified in many cases: as where a man kills one who assaults him in the highway to rob or murder him; or the owner of a house, or any of his servants or lodgers, &c. kill one who attempts to burn it, or to commit in it murder, robbery, or other felony (a); or a woman kills one who attempts to ravish her (1); or a servant coming suddenly and finding his master robbed and slain, falls upon the murderer immediately and kills him; for he does it in the height of his surprize, and under just apprehensions of the like attempt upon himself: but in other circumstances he could not have justified the killing of such an one, but ought to have apprehended him, &c.

(1) The injury intended can never be repaired or forgotten; and nature, to render the sex amiable, hath implanted in the female heart a quick sense of honour, the pride of virtue, which kindleth and inflameth at every such instance of brutal lust. *Fol.* 274. *Bac. El.* 34. *Prin. F. L.* 211.—So too the feelings of a parent or a husband which involuntarily actuate them at the moment to kill the forcible ravisher of a wife or a daughter's virtue, are justifiable. 1. *Hale* 488. And no doubt the forcibly attempting a crime of a still more detestable nature, may be equally resisted by the death of the unnatural aggressor. 4. *Comm.* 181.

Crom. 27. *Suin.* 56. 1. *Hale* 405. 440, 441. *Sec't. 22.* Neither shall a man in any case justify the killing another by a pretence of necessity, unless he were himself wholly without fault in bringing that necessity upon himself; for if a man, in defence of an injury done by himself, kill any person whatsoever, he is guilty of manslaughter at least; as where divers rioters wrongfully detain a house by force, and kill those who attack it from without, and endeavour to burn it.

Sim. 40. 57. *C. Car.* 438. *Dalt. c.* 98. 1. *Hale* 485, 486. 488. *Foster* 273. *Sec't. 23.* Neither can a man justify the killing another in defence of his house or goods, or even of his person, from a bare private trespass; and therefore he that kills another, who claiming a title to his house attempts to enter it by force, and shoots at it, or that breaks open his windows in order to arrest him, or that persists in breaking his hedges after he is forbidden, is guilty of manslaughter; and he who in his own defence kills another that assaults him in his house in the day-time, and plainly appears to intend to beat him only, is guilty of homicide *se defendendo*, for which he forfeits

forfeits his goods, but is pardoned of course; yet it seems that a private person, and, *a fortiori*, an officer of justice, who happens unavoidably to kill another in endeavouring to defend himself from, or to suppress dangerous rioters, may justify the fact, inasmuch as he only does his duty in aid of the public justice.

Pult. 119.
Sum. 40.
Crom. 28.
3. Inst. 138.
Poph. 121.

Sett. 24. And I can see no reason why a person who without provocation is assaulted by another in any place whatsoever, in such a manner as plainly shews an intent to murder him, as by discharging a pistol, or pushing at him with a drawn sword, &c. may not justify killing such an assaillant, as much as if he had attempted to rob him; for is not he who attempts to murder me more injurious than he who barely attempts to rob me? And can it be more justifiable to fight for my goods than for my life? And it is not only highly agreeable to reason that a man in such circumstances may lawfully kill another, but it seems also to be confirmed by the general tenor of our law-books; which, speaking of homicide *se defendendo*, suppose it done in some quarrel or affray. From whence it seems reasonable to conclude, that where the law judges a man guilty of homicide *se defendendo*, there must be some precedent quarrel in which both parties always are, or at least may justly be supposed to have been, in some fault, so that the necessity to which a man is at length reduced to kill another, is in some measure presumed to have been owing to himself: for it cannot be imagined that the law, which is founded on the highest reason, will adjudge a man to forfeit all his goods, and put him to the necessity of purchasing his pardon, without some appearance of a fault. And though it may be said that there is none in *chance-medley*, and yet that the party's goods are also forfeited by that, I answer, that *chance-medley* may be intended to proceed from some negligence, or at least want of sufficient caution in the party who is so unfortunate as to commit it, so that he doth not seem to be altogether faultless. Besides, one of the reasons given in our law-books for which homicide *se defendendo* forfeits goods, is because thereby a true man is killed; but it seems absurd, that he who apparently attempts to murder another, which is the most heinous of all felonies, should be esteemed such, when those who attempt other felonies, which seem to be much less criminal, are allowed to be killed as downright villains, not deserving the protection or regard of the law.

Bendlow. 47.
1. And. 41.
Kely. 128, 129,
1. Hale 481.
484.
Foster 274.

Crom. 27, 28.
Dalt. c. 98.
S. P. C. 15.
3. Inst. 57.
Vide F. Cor.
284, 286, 287,
Bacon 33.

S. P. C. 15.
Dalt. c. 98,
Foster 288.

Sett. 25. However; perhaps in all these cases there ought to be a distinction between an assault in the highway and an assault in a town. For in the first case it is said, that the person assaulted may justify killing the other without giving

N. Bendl. 47.
Crom. 27, 28.
Dalt. c. 98.
Sum. 42.
Foster 273,

back

back at all; but that in the second case he ought to retreat as far as he can without apparently hazarding his life, in respect of the probability of getting assistance.

Puff. l. 2. c. 5.
Bract. 155.
1. Hale 487.
1. And. 41.
Kely. 51.
Prin. P. L. 211.
26. Aff. 23.

† And by 24. Hen. 8. c. 5. it is recited, "Forasmuch as it hath been in question and ambiguity, that if any evil-disposed person or persons do attempt feloniously to rob or murder any person or persons in or high any common highway, cartway, horseway, or footway, or in their mansions, messuages, or dwelling-places; or that feloniously do attempt to break open any dwelling-house in the night-time; should happen, in the prosecution of such felonious intent, to be slain by him or them whom the said evil-doers should so attempt to rob or murder, or by any person or persons being in their dwelling-house, which the same evil-doers should so attempt burglarly to break by night, if the said person so happening in such cases to slay the offender so attempting to commit murder or burglary, should forfeit or lose his goods or chattels for the same, as any other person should do that by chance medley should happen to kill another in his or their defence." For the declaration of which ambiguity and doubt it is enacted, "That whoever shall be indicted or appealed of or for the death of such evil-disposed person or persons attempting to murder, rob, or burglarly to break mansion-houses as aforesaid, shall not forfeit any lands, tenements, goods, or chattels, but shall be thereof, and for the same, fully acquitted and discharged (1)."

(1) Not only the master of a house but a lodger or sojourner who kills an assailant intending to commit murder or robbery, is within the protection of this statute. Cro. Car. 544. But this reaches not to any crime unaccompanied with force, as picking of pockets; or to the breaking open of any house in the day-time, unless it carry with it an attempt of robbery or arson. 4. Comm. 185. Vide 1. Hale 488. And although it is the highest possible invasion of property, a man is not justifiable in killing another whom he taketh in adultery with his wife, for it favours more of sudden revenge than of self-preservation; but this law hath been executed with great benignity. Vent. 159. Ray. 212. Prin. P. L. 212. If the husband, however, detect the ravisher in the attempt, the wife calling for assistance, it is excusable *pro defensione*. 1. Hale 436.

Dalt. c. 98.
Bae. Elem. c. 5.
4. Com. 187.

SECT. 26. SECONDLY, Also the killing of an innocent person in defence of a man's self, is said to be justifiable in some special cases; as if two be shipwrecked together, and one of them get upon a plank to save himself, and the other also, having no other means to save his life, get upon the same plank, and finding it not able to support them both, thrust the other from it, whereby he is drowned, it seems that he who thus preserves his own life at the expence of

that

that of another, may justify the fact by the inevitable necessity of the case.

Sec. 27. If a man be awakened in the night with an alarm that thieves are in his house, and searching for them in the dark with his sword drawn, happen to kill a person lying hid in a part of the house, who in truth had no ill design, and was brought thither by a servant in order to assist in cleaning the house, it seemeth that he may justify the fact, inasmuch as it hath not the appearance of a fault. C. Car. 538.
March 5.
1. Hale 42, 43.

CHAPTER THE TWENTY-NINTH.

OF EXCUSABLE HOMICIDE.

See 1. Hale 38. **E**XCUSABLE homicide is either *per infortunium*, or *se*
to 41. 393-492. *defendendo*.—In treating of which I shall first shew the
nature of each of them distinctly, and then consider those
properties wherein they both agree.

Sum. 31. *Secl. 1. HOMICIDE per infortunium*, or by misadventure,
1. Hale 472. is where a man in doing a lawful act (1), without any intent
St. Tr. 3301. of hurt, unfortunately chances to kill another.
Strange 462.
Prin. P. L. 214.—(1) Whether the act must be strictly lawful to bring the homicide
within this description, vide Pof. 258, 259. 3. Inst. 56.

6. Ed. 4. 7. *Secl. 2. As Firſt*, Where a labourer being at work with
B. Cor. 59. 148. a hatchet, the head thereof flies off, and kills one who
stands by.

Sum. 58, 59. *Secl. 3. Secondly*, Where a third person whips a horse
1. Hale 476. on which a man is riding, whereupon he springs out, and
4. Comm. 182. runs over a child and kills him, in which case the rider is
guilty of homicide *per infortunium*; and he who gave the
blow, of manslaughter.

1. Hale 472, *Secl. 4. Thirdly*, Where a workman, having first given
475. loud warning to all persons to stand clear, flings down a
Kely. 40. piece of timber from a private house standing out of the
Bract. l. 3. c. 4. road, and thereby kills one who happens to be underneath;
Dalt. c. 96. —but if any person fling down such a piece of timber idly
B. Cor. 229. in play, or even a workman fling it down in the streets of
a town, where the danger is apparent in respect of the
number of people continually passing by, he is guilty of
manslaughter.

1. Hale 454-473. *Secl. 5. Fourthly*, Where a schoolmaster in correcting
Bract. l. 1. c. 4. his scholar, or a father his son, or a master his servant, or
Crem. 28. an officer in whipping a criminal condemned to such pu-
Dalt. c. 96. nishment, happen to occasion his death, yet if such per-
Keilw. 136. sons in their correction be so barbarous as to exceed all
Skin. 668. bounds of moderation, and thereby cause the party's death,
Kely. 65. they are guilty of *manslaughter* at the least (2); and if they
c. M. 287, &c.
Foster 262.

(2) So when an officer of the impress service fires at a boat in order to bring her
to, and kills a man, it is impossible that the offender should be made guilty of more
than manslaughter, especially if he fires in the manner usual upon such occasions.
L. Mansfield, Cowp. 832.

make

make use of an instrument improper for correction, and apparently endangering the party's life, as an iron bar, or sword, &c. or kick him to the ground, and then stamp on his belly and kill him, they are guilty of murder.

Sec. 6. Fifthly, Where one lawfully using an innocent diversion, as shooting at butts, or at a bird, &c. by the glancing of an arrow, or such like accident, kills another.

Keilw. 108.
B. Cor. 148.
Kely. 41.
Prin. P. L. 226.
3. Will. 407.

Sec. 7. Sixthly, Where a person happens to kill another in playing a match of foot-ball, wrestling, or such like sports which are attended with no apparent danger of life, and intended only for the trial, exercise, and improvement, of the strength, courage, and activity of the parties.

Keilw. 108.
136.
Crom. 29.
11. H. 7. 23.
Foster 260.

Sec. 8. Seventhly, Where one kills another in fighting at barriers or tilting by the king's command, which, by the better opinion, secures him from being guilty of felony, by reason of any such unfortunate accident.

11. H. 7. 23.
3. Inst. 160.
1. Hale 473.
Keilw. 108.
136.

Dalt. c. 96. Hob. 134. Crom. 29. Con. B. Cor. 22. Foster 261.

† So under the 22. and 23. Car. 2. c. 25. and the 4. & 5. Will. & Mary, c. 23. made for the preservation of game, where a stranger assisting a gamekeeper to seize nets even upon the ground of a third person, and, during the transaction, the gun of the stranger accidentally goes off, by which one of the poachers is killed, this is only *chance medley*, for the duty of the game-keeper will authorise the trespass of the stranger (a).

(a) 9. St. Tr.
315.

Sec. 9. But if a person kill another by shooting at a deer, &c. in a third person's park, in the doing whereof he is a trespasser; or by shooting off a gun (3), or throwing stones in a city or highway, or other place where men usually resort, or by throwing stones at another wantonly in play, which is a dangerous sport, and has not the least appearance of any good intent, or by doing any other such idle action as cannot but endanger the bodily hurt of some one or other; or by tilting or playing at handsword without the king's command, or by parrying with naked swords covered with buttons at the points, or with swords in the scabbards, or such like rash sports, which cannot be used without the manifest hazard of life, he is guilty of manslaughter.

Hob. 134.
Dalt. c. 98.
Alecyn, 12.
1. Hale 472,
473.
Foster 292.
Strange 499.
6. St. Tr. 195.
4. Comm. 183.

(3) Therefore where the defendant came to town in a chaise, and before he got out of it he fired his pistols, which by accident killed a woman, King, C. J. ruled it to be but manslaughter. Str. 481.

Kely. 117.

1. Hale 39. 475.

Sec. 10. And if a man happen to kill another in the execution of a malicious and deliberate purpose to do him a personal hurt, by wounding or beating him; or in the wilful commission of any unlawful act, which necessarily tends to raise tumults and quarrels, and consequently cannot but be attended with the danger of personal hurt to some one or other; as by committing a riot, robbing a park, &c. he shall be adjudged guilty of murder.

3. Inst. 56.

Kely. 117.

Sup. c. 27. f. 4.

1. Hale 475.

6. St. Tr. 222.

Prin. P. L. 226.

Sec. 11. And *à fortiori* he shall come under the same construction, who in the pursuance of a deliberate intention to commit a felony, chancs to kill a man, as by shooting at tame fowl, with an intent to steal them, &c. for such persons are by no means favoured, and they must at their peril take care of the consequence of their actions; and it is a general rule, that wherever a man intending to commit one felony, happens to commit another, he is as much guilty as if he had intended the felony which he actually commits.

1. Hale 476.

3. Inst. 57.

Dalt. c. 93.

Foster 262.

11. H. 7. 23. a.

B. Cor. 229.

Dalt. c. 97.

Sec. 12. Neither shall he be adjudged guilty of a less crime who kills another in doing such a wilful act as shews him to be as dangerous as a wild beast, and an enemy to mankind in general; as by going deliberately with a horse used to strike, or discharging a gun among a multitude of people, or throwing a great stone or piece of timber from a house into a street, through which he knows that many are passing; and it is no excuse that he intended no harm to any one in particular, or that he meant to do it only for sport, or to frighten the people, &c.

Vide sup. c. 28.

f. 23. 24.

S. P. C. 15.

4. Comm. 184.

Sec. 13. And now I am to consider HOMICIDE *se defendendo*, which seems to be where one, who has no other possible means of preserving his life from one who combats with him on a sudden quarrel, or of defending his person from one who attempts to beat him (especially if such attempt be made upon him in his own house), kills the persons by whom he is reduced to such an inevitable necessity.

B. Cor. 125.

43. Aff. 31.

3. Inst. 56.

Kely. 128.

Foster 273.

Sec. 14. And not only he who on an assault retreats to a wall, or some such streight, beyond which he can go no farther, before he kills the other, is judged by the law to act upon unavoidable necessity; but also he who being assaulted in such a manner, and such a place, that he cannot go back without manifestly endangering his life, kills the other without retreating at all,

Sec. 15. And notwithstanding a person who retreats from an assault to the wall, give the other wounds in his retreat, yet if he give him no mortal one till he get thither, and then kill him, he is guilty of homicide *se defendendo* only.

Sum. 41.
Crom. 28.
S. P. C. 15.

Sec. 16. And an officer who kills one that resists him in the execution of his office, and even a private person, that kills one who feloniously assaults him in the highway, may justify the fact without ever giving back at all.

3. Inst. 56.
Crom. 28.
Ante 71. f. 18.
9. St. Tr. 335.
Str. 499.
6. St. Tr. 195. Foft. 292.

Sec. 17. According to some good opinions, even he who gives another the first blow on a sudden quarrel, if he afterwards do what he can to avoid killing him, is not guilty of felony. Yet such a person seems to be too much favoured by this opinion, inasmuch as the necessity to which he is at last reduced, was at the first so much owing to his own fault.

S. P. C. 15.
Crom. 28.
1. Hale 479.
Dalt. c. 98.
Kely. 58.
Foster 276.

Sec. 18. And it is now agreed, that if a man strike another upon malice prepense, and then fly to the wall, and there kill him in his own defence, he is guilty of murder.

Thus far of each kind of EXCUSABLE HOMICIDE distinctly considered.—And now I am to consider those properties wherein they both agree.

4. Comm. 186.
188.

Sec. 19. AND FIRST, it seems clear, that neither of these homicides are felonies, because they are not accompanied with a felonious intent, which is necessary in every felony.

2. Inst. 149.
3. Inst. 56.
F. Cor. 116.
4. Comm. 182.

Sec. 20. And from hence it seems plainly to follow, that they were never punishable with loss of life: and the same also farther appears from the writ *de odio et atia*, by virtue whereof, if any person committed for killing another were found guilty of either of these homicides, and no other crime, he might be bailed; and indeed it seems to be against natural justice to condemn a man to death for what is owing rather to his misfortune than his fault.

11. H. 4. 93.
B. Cor. 80.
15. Aff. 7.
Post. f. 24.
Fol. 284, 285.

Sec. 21. It is true indeed that some of our best authors have argued from the *statute of Marlebridge*, 52. Hen. 3. c. 26. which enacts, that "*Murdrum de cætero non adjudicetur, ubi infortunium tantummodo adjudicatum est, &c.*" that before this statute homicides by misadventure, or *se defendendo*, were adjudged murder, and consequently punished by death.

2. Inst. 56.
S. P. C. 16.
1. Hale 447.

Bract. 134.
Kely. 121.
See. Hale 425.
448.

Sec. 22. But to this it may be answered, that murder in those days signified only the private killing of a man by one who was neither seen nor heard by any witnesses, for which the offender, if found, was to be tried by ordeal, and if he could not be found, the town in which the fact was done was to be amerced sixty-six marks, unless it could be proved that the person killed was an *Englishman*; for otherwise it was presumed that he was a *Dane* or a *Norman*, who in those days were often privately made away with by the *English*. And it being a doubt whether homicide by misadventure, &c. were to be esteemed murder in this sense, it seems to have been the chief intent of the makers of this statute to settle this question.

Bract. 135.

Sum. 98, 99.
2. Inst. 315.
Dalt. c. 98.
1. Hale 477.
Or they may
be brought
up by *babeas*

Sec. 23. SECONDLY, It is certain, however, that notwithstanding neither of these offences be felonies, yet a person guilty of them is not bailable by justices of peace, but must be committed till the next coming of the justices of eyre or gaol-delivery.

corpus, and bailed.

Reg. 133.
2. Inst. 42, 315.
9. Co. 56.
4. Inst. 182.
Bract. 123.
Fletab. 1. c. 25.
S. B. C. 77.
2. Inst. 43, 315.

Sec. 24. Indeed anciently a person committed for the death of a man might sue out the writ *de odio et atia*, which by *Magna Charta*, c. 26. is grantable without fee; and if thereon, by an inquest taken by the sheriff, he were found to have done the fact by misadventure, or *se defendendo*, he might be mainprized by twelve men, upon the writ *de ponnendo in ballium*. But such writs and enquiries were taken away by the *statute of Gloucester*, c. 9. and the statute 28. Edw. 3. c. 9. And though perhaps they were again revived by the 42. Edw. 3. c. 1. which makes all statutes contrary to *Magna Charta* void; yet at this day they seem to be obsolete, and indeed useless, inasmuch as the party may probably be sooner delivered in the usual course, by the coming of the justices of gaol-delivery.

9. Co. 56.
Co. Bail and
Mainp. c. 10.
Foster 285.
and vide 31.
Car. 2. c. 2.

Antec. 28. f. 3.
1. Hale 478.
4. H. 7. 2.
Keilw. 53, 108.
2. Inst. 316.
S. P. C. 15, 16.
F. Cor. 297.
354, 361.
Dalt. c. 96, 98.
F. N. B. 246.
Foster ch. 4.

Sec. 25. THIRDLY, It is also agreed, that no one can excuse the killing another, by setting forth in a special plea, that he did it by misadventure, or *se defendendo*, but that he must plead *not guilty*, and give the special matter in evidence. And that wherever a person is found guilty of such homicide, either upon a special indictment for the same, or by a verdict setting forth the circumstances of the case on a general indictment of murder or homicide, he shall be discharged out of prison upon bail, and forfeit his goods; but that upon removing the record by *certiorari* into chancery, he shall have his pardon of course, without staying for any warrant from the king to that purpose, as shall be more fully shewn in the second book, ch. 37. sect. 1.

CHAPTER THE THIRTIETH.

OF MANSLAUGHTER.

HOMICIDE against the life of another, amounting to felony, is either with or without malice. Foster c. 5. Dif. 2d.

Sett. 1. That which is without malice is called *manslaughter*, or sometimes *chance-medley*, by which we understand such killing as happens either on a sudden quarrel, or in the commission of an unlawful act, without any deliberate intention of doing any mischief at all. 4. Comm. 186. 191. Prin. P. L. 215. 219. 224. 3. Inst. 55. 57. Dalt. c. 94. Sum. 56, 57. 1. Hale 466.

Sett. 2. And from hence it follows, that there can be no accessaries to this offence before the fact, because it must be done without premeditation. Sum. 217. B. 2. c. 29. f. 24.

Sett. 3. But the learning relating to this head being for the most part co-incident with that of others, it will be superfluous to enlarge on it here; and therefore I shall refer the reader to other chapters for the particular case; as to the following chapter of murder, for those concerning duelling (*a*); and for such as happen in a riot, &c. (*a*) Ch. 31. f. 21. to 32. (*b*) Ch. 31. f. 47. to 49. and ante ch. 28. f. 14, 15. (*c*) Ch. 29. f. 6. to 13. Co. Lit. 127. Kely. 55. 135. 1. Hale 456.

Sett. 4. But there is a particular kind of manslaughter proper to be considered here, from which the benefit of the clergy is taken away by 1. Jac. 1. c. 8. (*d*) which enacts, that “where any person shall stab or thrust any person or persons that hath not then any weapon drawn, or that hath not then first stricken, the party which shall so stab or thrust, so as the person or persons so stabbed or thrust shall thereof die within the space of six months then next following, although it cannot be proved that the same was done of malice forethought.” (*d*) See Skinn. 668. Ld. Ray. 140. 845. 7. Mod. 133. Foster 297. and 4. Bl. Com. 193. for the reason of passing this act, which is continued by the 17. Car. 1. c. 4. “till some other act shall be made of continuance or discontinuance thereof.” touching the

Sett. 5. It is generally holden, that this statute is but declarative of the common law, and in the construction thereof the following points have been resolved. 1. Bulst. 87. Kely. 55. 1. Hale 456. Fol. 298.

Bryant's Case *Señ. 6. First*, That wherever a person who happens to kill another was struck by him in the quarrel before he gave the mortal wound, he is out of the statute though he himself gave the first blow.
1. Jon. 317. But see Skin. 668. where Lord Holt questions this case.

Señ. 7. Secondly, That he only who actually gives the stroke, and not any of those who may be said to do it by construction of law, as being present, and aiding and abetting the fact, are within the statute; from whence it follows, that if it cannot be proved by whom the stroke was given, none can be found guilty within the statute.
1. Hale 468. 2. Hale 344. Alleyne 44. Sec b. 2. c. 33. f. 98. Styles' 86. Salk. 542, 543. Prin. P. L. 232. Fost. 301.

Señ. 8. Thirdly, That the killing of a man with a hammer, or such like instrument, which cannot come properly under the words "thrust" or "stab" is not a killing within the statute.—But it seems, that the discharging a pistol, or throwing a pot, or other dangerous weapon at the party, is within the equity of the words, "having a weapon drawn;" for penal statutes are construed strictly against the subject, and favourably and equitably for him.
1. Jones 432. confirmed by Holt in Mawgridge's case; Kely. 131. Skin. 668. 3. Lev. 266. 255.

Señ. 9. Fourthly, That there is no need to lay the conclusion of the indictment *contra formam statuti*, because the statute makes no new offence, but only takes away the privilege of the clergy from an old one, and leaves it to the judgment of the common law; from whence it follows, that a person indicted on the statute may be found guilty of manslaughter generally. • Also from the same ground it hath been resolved, that if both an indictment lay, and a verdict also find, a fact to be *contra formam statuti*, which cannot possibly be so, as that *A.* and *B.* aided and abetted *C.* *contra formam statuti*, yet neither such indictment nor verdict are void, but *A.* and *B.* shall be dealt with in the same manner as they should have been, if those words *contra formam statuti* had been wholly omitted, because the substance of the indictment being found, they may be rejected as surplusage and senseless: and, *à fortiori*, therefore it is certain, that they shall do no hurt to an indictment or verdict containing a fact which may be within the statute.
Sec b. 2. c. 25. f. 117. Sum. 58. 266. Alleyne 47. Cro. Jac. 282.

Señ. 10. Fifthly, How far the words *contra formam statuti* supply a defect in an indictment which does not specially pursue
Sec. Hale 467. to 470.

pursue the statute, see the second book, chapter 25. section 116.

A prisoner whose case may be brought within this statute is commonly arraigned upon two indictments, one at common law for murder, and the other upon the statute. Fof. 299. But the same circumstances which at common law will serve to justify, excuse, or alleviate in a charge of murder, have always had their due weight in prosecutions grounded upon this statute. Fof. 298. As where a husband stabs an adulterer whom he seizes in the act. 1. Vent. 158. Raym. 212. Or where a man is assaulted by thieves in his house, the thieves having no weapon drawn, nor having struck him, and he stabs one of them. Stra. 469. Or where an officer entering violently into the chamber of a gentleman to arrest him, but without announcing the purpose for which he came, is stabbed by the gentleman with his sword. Kely. 136. 1. Hale 470. Styles 467. Or where upon an out-cry of thieves, a person who had innocently hidden himself in a closet, was mistaken for the thief and stabbed in the dark. 1. Hale 42. 474. C. Car. 538. W. Jones 429. Kely. 136. And many other instances of these kinds which have been held not within the statute.

CHAPTER THE THIRTY-FIRST.

OF MURDER.

HOMICIDE against the life of another, amounting to FELONY with *malice*, is either *murder* or *petit treason*.

And first of MURDER.

Dialog. de Scacch. l. 1. c. 10. Stiern. jure Sueo, l. 3. c. 3. Glanv. l. 14. c. 3. Foster 281. Stat. Marlbr. c. 26. Prin. P. L. 230. Brañt. 134. 135. Kely. 121. &c. 1. Hale c. 447. *Señ. 1.* The word "murder" anciently signified only the private killing of a man, for which by force of a law introduced by KING CANUTE for the preservation of his *Danes*, the town or hundred where the fact was done was to be amerced (*a*) to the king, unless they could prove that the person slain were an *Englishman* (which proof was called *Engleschire*), or could produce the offender, &c. And in those days the open wilful killing of a man through anger or malice, &c. was not called *murder*, but *voluntary homicide*.
Brañt. 121.—(a) The amerciamment was 46 marks. Wilk. Ang. Sax. 280.

S. P. C. 18, 19. 1. Hale 448. *Señ. 2.* But the said law concerning *Engleschire* having been abolished by 14. Edw. 3. c. 4. the killing of any *Englishman* or foreigner through malice prepenſe, whether committed openly or secretly, was by degrees called murder; and 13. Rich. 2. c. 1. which restrains the king's pardon in certain cases, docs in the preamble, under the general name of *murder*, include all such homicide as shall not be pardoned without special words; and, in the body of the act, expresses the same by "murder, or killing by await, assault, "or malice prepenſed." And doubtless the makers of 23. Hen. 8. c. 1. which excluded all wilful murder of malice prepenſe from the benefit of the clergy, intended to include open, as well as private, homicide within the word murder.

Stamf. l. 1. c. 10. 1. Hale 450. 3. Inst. 47. *Señ. 3.* By MURDER, therefore, at this day, we understand the wilful killing of any subject whatsoever, through malice forethought, whether the person slain shall be an *Englishman* or foreigner.

And for the better understanding hereof, I shall examine the following particulars:—FIRST, In what cases a man may be said to kill another. SECONDLY, In what places such killing is within the cognizance of the law. THIRDLY,

Who are such persons by killing of whom a man may commit murder. **FOURTHLY**, What killing shall be adjudged to be malice prepenſe, or murder.

As to **THE FIRST POINT**, *viz.* In what caſes a man may be ſaid to kill another.

Secſ. 4. Not only he who by a wound or blow, or by poiſoning, ſtrangling, or ſmothering, &c. directly cauſes another's death, but alſo in many caſes he who by wilfully and deliberately doing a thing which apparently endangers another's life, thereby occaſions his death, ſhall be adjudged to kill him.

3. Inſt. 48. 91.
Palm. 548.
1. Inſt. 295.
4. Comm. 196.
1. Hale 425.
432.
2. Hawk. c. 29.
31.
9. Str. Tr. 146. to 251.

Secſ. 5. And ſuch was the caſe of him who carried his ſick father againſt his will, in a cold froſty ſeaſon, from one town to another, by reaſon whereof he died.

Crom. 24. 90.
Pult. 122.
Dalt. c. 93.
1. Hale 431, 432.

Secſ. 6. Such alſo was the caſe of the harlot, who being delivered of a child, left it in an orchard covered only with leaves, in which condition it was ſtruck by a kite, and died thereof.

Crom. 24.
Dalt. c. 93.
1. Hale 432.

Secſ. 7. And in ſome caſes a man ſhall be ſaid, in the judgment of the law, to kill one who is in truth actually killed by another, or by himſelf; as where one by duress of imprifonment compels a man to accuſe an innocent perſon who on his evidence is condemned and executed; or where one incites (b) madman to kill himſelf or another; or where one lays (c) poiſon with an intent to kill one man, which is afterwards accidentally taken by another, who dies thereof.

(a) S. P. C. 36.
c.
3. Inſt. 91.
Vide 14. Ed. 3.
c. 10.
(b) Dalt. c. 93.
Sup. c. 1. f. 7.
1. Hale 431, 436.
442. 467.
(c) Plowd. 474.

Secſ. 8. Alſo he who wilfully neglects to prevent a miſchief, which he may and ought to provide againſt, is, as ſome have ſaid, in judgment of the law, the actual cauſe of the damage which iſſues; and therefore if a man have an ox or a horſe, which he knows to be miſchievous, by being uſed to gore or ſtrike at thoſe who come near them, and do not tie them up, but leave them to their liberty, and they afterwards kill a man, according to ſome opinions, the owner may be indicted as having himſelf feloniously killed him; and this is agreeable to the *Mofaical law*. However, as it is agreed by all, ſuch a perſon is certainly guilty of a very groſs miſdemeanour.

9. Co. 81.
1. Hale 430,
431, 617.
F. Cor. 311.
S. P. C. 17.
Crom. 24.
Dalt. c. 93.
Pult. 122.
Exodus c. xxi.
v. 29.
L. Raym. 143.
Prin. P. L. 236.

Secſ. 9. Alſo it is agreed, that no perſon ſhall be adjudged by any act whatever to kill another who doth not

Pult. 123.
Dalt. c. 93.
S. P. C. 21.
die

die thereof within a year and a day after; in the computation whereof the whole day on which the hurt was done shall be reckoned the first.

3. Inst. 53. *Sec. 10.* But if a person hurt by another die thereof
Kely. 26. within a year and a day, it is no excuse for the other that
1. Keb. 17. he might have recovered, if he had not neglected to take
1. Hale 428. care of himself.
Prin.P.L.234.

A gaoler, knowing a prisoner to be infected with an epidemick distemper, confines another prisoner against his will in the same room with him, by which he catches the infection, of which the gaoler had notice, and the prisoner dies; this is a felonious killing. Stra. 856. 9. St. Tr. 146. So, to confine a prisoner in a low, damp, unwholesome room, not allowing him the common conveniencies which the decencies of nature require, by which the habits of his constitution are so affected as to produce a distemper of which he dies; this also is felonious homicide. Stra. 884. *Ld. Raym.* 1578. For although the law invests gaolers with all necessary powers for the interest of the commonwealth, they are not to behave with the least degree of wanton cruelty to their prisoners. *O. B.* 1784. p. 1177. And these were deliberate acts of cruelty, and enormous violations of the trust the law reposes in its ministers of justice. *Foster* 322.

So also, any one who assuming to take care of another, refuses the necessary subsistence, or by any other severity, though not of a nature to produce immediate death, as by putting the party in such a situation as may possibly be dangerous to life or health, if death actually and clearly ensues in consequence of it, it is murder.—And this mode of killing is of the most aggravated kind, because a long time must unavoidably intervene before the death can happen, and also many opportunities of deliberation and reflection. *O. B.* 1784. p. 455. and *Rex v. S. Self.* *O. B. Feb. Sess.* 1776.

So also, by the old common law, to bear false witness, and with express premeditation, by this means to take away the life of another, was held to be murder. *Mirr. c. 1. f. 19.* *Brit. c. 5.* *Braet. l. 3. c. 4.* But it is said that this enormous crime can hardly be so considered at this day: 3. Inst. 48. The authority, however, for this opinion, in *Foster* 131. is said by no means absolutely to warrant the conclusion. 4. Comm. 196.

AS TO THE SECOND POINT, *viz.* In what places such killing is within the consueance of the law. .

3. Inst. 48. *Sec. 11.* It seems, that the killing of one who is both
1. Hale 426. wounded and dies out of the realm, or wounded out of the
2. Inst. 51. realm and dies here, cannot be determined at common law,
Co. Lit. 75. because it cannot be tried by a jury of the neighbourhood
S. P. C. 65. where the fact was done. But it is agreed, that the death of
B. App. 153. one who is both wounded and dies beyond sea; and it is
C. Car. 247. said by some, that the death of him who dies here of a
Bk. 2. c. 23. wound given there may be heard and determined before the
f. 12. constable and marshal, according to the civil law, if the
3. Keb. 785. king please to appoint a constable. And it seemeth also to
Con. 3. Keb. be clear, that such a fact being examined by the privy council,
715. may by force of 33. Hen. 8. c. 23. be tried, in relation
1. And. 195. to the principal offenders, but not as to the accessaries, before commissioners appointed by the king in any county in England.

Sec. 12. A murder at sea was anciently cognizable only by the civil law, but now by force of 27. Hen. 8. c. 4. and 28. Hen. 8. c. 15. it may be tried and determined before the king's commissioners (1) in any county of *England* according to the course of the common law. Yet the killing of one who dies at land of a wound received at sea, is neither determinable at common law, nor by force of either of these statutes: but it seems that it may be tried by the constable and marshal, or before commissioners appointed, in pursuance of the aforesaid statute of 33. Hen. 8. c. 23.

(1) Namely, the admiral or his deputy, and three or four more (among whom two common-law judges are constantly appointed, who in effect try all the prisoners) the indictment being first found by a grand jury of twelve men, and afterwards tried by another jury. This is now the only method of trying marine felonies in the court of admiralty; the judge of the admiralty still presiding therein, just as the lord mayor presides at the sessions in London. 4. Comm. 266.

† And for preventing any failure of justice, and for taking away all doubts touching the trial of murders in the following cases—It is enacted by the 2. Geo. 2. c. 21. “That where any person shall be feloniously stricken or poisoned upon the sea, or at any place out of *England*, and shall die of the same stroke or poisoning within *England*;—or where any person shall be feloniously stricken or poisoned at any place within *England*, and shall die of the same stroke or poisoning upon the sea, or at any place out of *England*; an indictment thereof found by the jurors of the county of *England* in which such death, stroke, or poisoning shall happen respectively as aforesaid, whether before the coroner upon the view of such dead body, or before the justices of the peace, or other justices or commissioners who shall have authority to enquire of murders, shall be as good and effectual in law as well against the principals and accessaries, as if such felonious stroke and death, or poisoning and death, and the offence of such accessaries, had happened in the same county where such indictment shall be found; and the justices of gaol delivery and oyer and terminer in the same county, and also any superior court, in case such indictment shall be removed, &c. shall and may proceed upon the same in all points, as they might or ought to do in case such stroke, poisoning, or death, &c. had happened in the same county where such indictment shall be found.”

Sec. 13. It is said by some, that the death of one who died in one county of the wound given in another, was not
 141. 143. *Indict.* 13. 45. S. P. C. 90. 6. H. 7. 10. *Fitch* 411. *S. P. C.* 182. c. 4. *Aff.* 9. B. App. 3. 80. 83. 85. 149.

indict-

Indictable at all at common law, because the offence was not compleat in either county, and the jury could enquire only of what happened in their own county. But it hath been holden by others, that if the corpse were carried into the county where the stroke was given, the whole might be enquired of by a jury of the same county; and it is agreed, that an appeal might be brought in either county, and the fact tried by a jury returned jointly from each: and at this day, by force of 2. and 3. Edw. 6. c. 24. the whole is triable by a jury of the county where the death shall happen, on an indictment found, or appeal brought, in the same county.

B. 2. c. 25. f. *Sett.* 14. Also by force of 26. Hen. 8. c. 6. a murder in 39, 40. *Wales* may be enquired of in an adjoining *English* county. C. Car. 247. But appeals must still be brought in the proper county. 498. 533. 1. Jon. 255. 1. Lev. 118. Latch. 12. 118. 3. Inst. 50. 8. Mod. 136. 146. Stra. 502. 553. 6. Mod. 147. Vaugh. 413. Sid. 179. Keb. 621. 663. 677. Willf. 320. Atk. 175. 182. Vent. 93.

As to THE THIRD POINT, viz. Who are such persons by killing of whom a man may commit murder.

Sett. 15. It is agreed, that the malicious killing of any person, whatsoever nation or religion he be of, or of whatsoever crime attained, is murder.

Braet. 121. *Sett.* 16. And it was anciently holden, that the causing S. P. C. 21. of an abortion, by giving a potion to, or striking a woman B. Cor. 91. big with child, was murder. But at this day it is said to be F. Cor. 146. a great misprision only, and not murder, unless the child be 183. 263. born alive and die thereof, in which case it seems clearly to (a) Vide 1. Hale 433. be murder, notwithstanding some opinions to the contrary 23. Aff. 94. (a). And in this respect also, the common law seems b. 2. c. 29. f. to be agreeable to the *Mosaical*, which as to this purpose 18. is thus expressed: "If men strive and hurt a woman with 3. Inst. 50. " child, so that her fruit depart from her, and yet no mis- 3. Aff. 2. " chief follow, he shall be surely punished, according as B. Cor. 68. " the woman's husband will lay upon him, and he shall Dalt. c. 93. " pay as the judges determine; and if any mischief follow, Exodus c. xxi. " then thou shalt give life for life." v. 22, 23.

Dyer 186. *Sett.* 17. It seems also agreed, that where one counsels 1. Hale 433. a woman to kill her child when it shall be born, who afterwards does kill it in pursuance of such advice, he is an necessary to the murder. † But in the case of the murder of bastard children by the unnatural mother, it is difficult to prove that the child was born alive; and it is therefore

enacted by 21. Jac. 1. c. 27. made perpetual by 16. Car. 1. c. 4. "That if any woman be delivered of any issue of her body, male or female, which being born alive, should by the laws of this realm be a bastard, and she endeavour privately, either by drowning or secret burying thereof, or any other way, either by herself, or the procuring of others, so to conceal the death thereof, as that it may not come to light whether it were born alive or not, but be concealed, except such mother can prove by one witness that such child was born dead, she shall suffer death as in case of murder."

4. Comm. 198.
Barrington. 425.
Prin. P. L. 16.
O. B. 1784. p.
1223.

As to THE FOURTH POINT, *viz.* What killing shall be adjudged of malice prepenſe or murder.

Secſ. 18. It is to be observed, that any formed design of doing mischief may be called malice; and therefore that not such killing only as proceeds from premeditated hatred or revenge against the person killed, but also in many other cases, such as is accompanied with those circumstances that shew the heart to be perversely wicked, is adjudged to be of malice prepenſe, and consequently murder.

Foſt. 256, 257.
Kely. 130.
1. Hale 451. to
454.

Secſ. 19. And according to this notion, I shall consider, FIRST, Such murder as is occasioned through an express purpose to do some personal injury to him who is slain in particular, which seems to be most properly called express malice.—SECONDLY, Such as happens in the execution of an unlawful action, principally intended for some other purpose, and not to do a personal injury to him in particular who is slain, in which case the malice seems to be most properly said to be implied.

Kely. 129, 130.
1. Hale 455, &c.
9. St. Tr. 715.
Prin. P. L. 236.

Secſ. 20. As to MURDER in the first sense, such acts as shew a direct and deliberate intent to kill another, as poisoning, stabbing, and such like, are so clearly murder, that I know not any questions relating thereto worth explaining.

But the cases which have borne dispute have generally happened in the following instances:—FIRST, In duelling.—SECONDLY, In killing another without any provocation, or but upon a slight one.—THIRDLY, In killing one whom the person killing intended to hurt in a less degree.

Secſ. 21. As to THE FIRST INSTANCE of this kind, it seems agreed, that wherever two persons in cool blood meet and fight on a precedent quarrel, and one of them is killed, the other is guilty of murder, and cannot help himself by alledging

Bulſt. 86, 87.
Kely. 129.
10. St. Tr. 139.

(a) 2. Bullst. 147. alledging that he was (a) first struck by the deceased; or
 Crom. 22. that he had often (b) declined to meet him, and was pre-
 (b) 1. Roll. 360. vailed upon to do it by his importunity; or that it was his
 3. Bullst. 171. intent only to vindicate his reputation; or that he meant not
 1. Hale 452, to kill but only to disarm his adversary; for since he delibe-
 453. rately engaged in an act highly unlawful, in defiance of
 O. B. 1784. the laws, he must at his peril abide the consequences
 No. 776. thereof.

3. Inst. 51. *SecT. 22.* And from hence it clearly follows, that if two
 Kely. 56. persons quarrel over-night, and appoint to fight the next
 1. Lev. 80. day, or quarrel in the morning, and agree to fight in the
 Foster 297. afternoon, or such a considerable time after, by which, in
 Onchv's Case, common intendment, it must be presumed that the blood
 9. St. Tr. 22. was cooled, and then they meet and fight, and one kill the
 other, he is guilty of murder.

Kely. 56. 27. *SecT. 23.* And wherever it appears from the whole cir-
 1. Sid. 177: cumstances of the case, that he who kills another on a sud-
 Foster 297. den quarrel, was master of his temper at the time, he is
 Strange 773. guilty of murder; as if after the quarrel he fall into other
 Ld. Ray. 1489. discourse, and talk calmly thereon; or perhaps if he have
 1493. so much consideration as to say, that the place wherein the
 1. Lev. 180. quarrel happens is not convenient for fighting; or that if
 he should fight at present, he should have the disadvantage
 by reason of the height of his shoes, &c.

SecT. 24. And if *A.* on a quarrel with *B.* tell him that
 he will not strike him, but that he will give *B.* a pot of ale
 to strike him, and thereupon *B.* strike and *A.* kill him, he
 Sum. 48. is guilty of murder, for he shall not elude the justice of the
 law by such pretence to cover his malice.

SecT. 25. In like manner, if *B.* challenge *A.* and *A.* re-
 fuse to meet him, but in order to evade the law tell *B.* that
 he shall go the next day to such a town about his business,
 1. Hale 453. and accordingly *B.* meet him the next day in the road to the
 Con. Crom. 22. same town, and assault him, whereupon they fight, and *A.*
 and Sum. 48. kills *B.* he seems guilty of murder, unless it appear by the
 whole circumstances that he gave *B.* such information acci-
 dentally, and not with a design to give him an opportunity
 of fighting.

SecT. 26. And at this day it seems to be settled, that if a
 man assault another with malice prepense, and after be dri-
 ven by him to the wall, and kill him there in his own de-
 fence, he is guilty of murder in respect of his first intent.

Sett. 27. And it hath been adjudged, that even upon a sudden quarrel, if a man be so far provoked by any bare words or gestures of another as to make a push at him with a sword, or strike at him with any other such weapon as manifestly endangers his life, before the other's sword is drawn, and thereupon a fight ensue, and he who made such assault kill the other, he is guilty of murder; because that by assaulting the other in such an outrageous manner, without giving him an opportunity to defend himself, he shewed that he intended not to fight with him but to kill him, which violent revenge is no more excused by such a slight provocation, than if there had been none at all.

Crom. 23.
Dalt. c. 93.
Kely. 61. 131.
Ld. Ray. 1489.
9. St. Tr. 62.

Sett. 28. But it is said, that if he who draws upon another in a sudden quarrel make no pass at him till his sword is drawn, and then fight with him and kill him, he is guilty of manslaughter only, because that by neglecting the opportunity of killing the other before he was on his guard, and in a condition to defend himself, with a like hazard to both, he shewed that his intent was not so much to kill as to combat with the other, in compliance with those common notions of honour, which prevailing over reason during the time that a man is under the transports of a sudden passion, so far mitigate his offence in fighting, that it shall not be adjudged to be of malice prepense.

Kely. 55. 61.
131.
Ld. Ray. 1493.
10. St. Tr. 518.
Foster 297.
2. Roll. 461.

Sett. 29. And if two happen to fall out upon a sudden, and presently agree to fight, and each of them fetch a weapon, and go into the field and there one kill the other, he is guilty of manslaughter only, because he did it in the heat of blood.

3. Inst. 51.
1. Hale 453.
3. Bulst. 17.

Sett. 30. And such an indulgence is shewn to the frailties of human nature, that where two persons who have formerly fought on malice, are afterwards to all appearance reconciled, and fight again on a fresh quarrel, it shall not be presumed that they were moved by the old grudge, unless it appear by the whole circumstances of the fact.

1. Hale 452.
Crom. 23.
Dalt. c. 93.
1. Roll. 360.
3. Bulst. 171.

Sett. 31. But the law so far abhors all duelling in cold blood, that not only the principal who actually kills the other, but also his seconds are guilty of murder, whether they fought or not; and some have gone so far as to hold, that the seconds of the person killed are also equally guilty, in respect to that countenance which they give to their principals in the execution of their purpose, by accompanying them therein, and being ready to bear a part with them: but some have thought this rather too severe a construction to make a man by such reasoning the murderer

Dalt. c. 93.
1. Freem. 514.
O. B. 1784. p. 1043.
1. Hale 443.
11. St. Tr. 114.
Prin. P. L. c. 19.

of

of his friend, to whom he was so far from intending any mischief, that he was ready to hazard his own life in his quarrel.

Foster 275. *Sec. 32.* As to THE SECOND INSTANCE of this kind, viz. such murder as happens in killing another without any provocation, or but upon a slight one; it is to be observed, that wherever it appears that a man killed another, it shall be intended, *prima facie*, that he did it maliciously, unless he can make out the contrary, by shewing that he did it on a sudden provocation, &c.

Cro. Eliz. 694. *Sec. 33.* Also it seems to be agreed, that no (a) breach of a man's word or promise, no trespass either to (b) lands or goods, no affront by bare (c) words or gestures, however false or malicious it may be, and aggravated with the most provoking circumstances, will excuse him from being guilty of murder, who is so far transported thereby, as immediately to attack the person who offends him in such a manner as manifestly endangers his life, without giving him time to put himself upon his guard, if he kills him in pursuance of such assault, whether the person slain did at all fight in his defence or not; for so base and cruel a revenge cannot have too severe a construction.

(a) Kely. 135. 1. Hale 455, 456. 473. 2. Roll. 460, 461. (b) Kely. 131, &c. Dalt. c. 95. (c) C. Eliz. 779. Noy 171. 1. Sid. 277. 1. Lev. 180. Hob. 121. Con. 1. Jon. 432. Kely. 55. 61. 131. C. Jac. 296. 12. Co. 87. O. B. 1784. p. 19. Foster 326. 5. St. Tr. 296. 7. St. Tr. 422. Styles 467. See the case Bartholomew Quarle, argued on a special verdict in the king's bench in Hilary 1791.

Vide Fof. 295. *Sec. 34.* But if a person so provoked had beaten the other only in such a manner, that it might plainly appear that he meant not to kill, but only chastise him; or if he had restrained himself till the other had put himself on his guard, and then in fighting with him had killed him, he had been guilty of manslaughter only.

Sec. 35. And of the like offence shall he be adjudged guilty, who seeing two persons fighting together on a private quarrel, whether sudden or malicious, takes part with one of them, and kills the other.

(a) Kely. 137. *Sec. 36.* Neither can he be thought guilty of a greater crime, who (a) finding a man in bed with his wife, or being actually (b) struck by him, or pulled by the nose, or flippiped upon the forehead, immediately kills him; or (c) who happens to kill another in a contention for the wall; or (d) in the defence of his person from an unlawful arrest; or (e) in the defence of his house from those who claiming a title to it attempt forcibly to enter it, and to that purpose

1. Vent. 158. Raym. 212. 2. Keb. 829. (b) Kely. 135. 3. Mod. 68. (c) Sum. 57. 3. Inst. 55. (d) Kely. 137. 1. Hale 457. (e) Crom. 27. 1. Hale 445.

shoot at it, &c. or in (a) the defence of his possession of a room in a public-house from those who attempt to turn him out of it, and thereupon draw their swords upon him; in which case the killing the assailant hath been holden by some to be justifiable: but it is certain that it can amount to no more than manslaughter.

Self. 37. Nor was he judged criminal in a higher degree, who seeing his son's nose bloody, and being told by him, that he had been beaten by such a boy, ran three quarters of a mile, and having found the boy, beat him with a small cudgel, whereof he afterwards died.

Rowley's Case, C. Jac. 296.
1. Hale 453.
Godb. 18.
Ld. Raym. 1498.

and Foster 294, 295.

† *Self. 38.* Nor was he thought more criminal, who, duped and encouraged by a concourse of people, threw a pickpocket into a pond adjoining to the road, in order to avenge the theft by ducking him, but without any apparent intention to take away his life, and the pickpocket was drowned; for although this mode of punishment is highly unjustifiable and illegal, yet the law respects the infirmities and imbecilities of human nature where certain provocations are given.

Old Bailey Session 1785.

† *Self. 39.* So also where three Scotch soldiers were drinking together in a public-house, and one of them struck some strangers, who were drinking in another box, with a small rattan, for having used several opprobrious epithets, and reviled the character of the Scotch nation, and an altercation ensued; and one of the strangers laid hold of the soldier who had stricken, and threw him against a settle; and, when the soldier had paid the reckoning, the stranger again shoved him from the room into the passage, upon which the soldier exclaimed, that "he did not mind killing an Englishman more than eating a mess of crowdy;" upon which the stranger, assisted by another person, violently pushed the soldier out of the house, whereupon the soldier instantly turned round, drew his sword, and stabbed the stranger to the heart; this was adjudged manslaughter.

Rex v Taylor, 5. Burr. 2793.

† *Self. 40.* But in these, and indeed in every other case of homicide upon provocation, how great soever it be, if there is

1. Hale 486.
2. Ven. 158.

Ray. 212. Mary Hazel's case in B. R. on a special verdict from Norfolk, Trinity Term 1784. But see the cases of the King v. Snow, tried before Mr. Justice Willes, Sum. Ass. Northampton, 1786, Cases in C. L. 138; Rex v. John Brown for the murder of J. Maccafer, June 1776, Cases in C. L. 131; and the case of Bartholomew Quarle for the murder of his wife at Hadgrave, in the Isle of Ely, argued on a special verdict in the King's bench in Hilary Term 1791.

a sufficient time for passion to subside, and for reason to interpose, such homicide will be murder.

As to THE THIRD INSTANCE of this kind, *viz.* Such murder as happens in killing one whom the person killing intended to hurt in a less degree.

Kely. 61. 131. *Sec. 41.* It is to be observed, that wherever a person, in cool blood, by way of revenge, unlawfully and deliberately beats another in such a manner that he afterwards dies thereof, he is guilty of murder, however unwilling he might have been to have gone so far.
Jones 198.
Palm. 585.
Str. 771.
Ld. Raym.
 1489. 1493.

Holloway's *Sec. 42.* Also it seems, that he who, upon a sudden Case, C. Car. provocation, executes his revenge in such a cruel manner, as shews a cruel and deliberate intent to do mischief, is guilty of murder, if death ensue; as where the keeper of a park finding a boy stealing wood, tied him to a horse's tail and beat him, whereupon the horse ran away and killed him.
 131.
W. Jon. 198.
Palm. 545.
Kely. 127.
1. Hale 414.
Foster 292.

Sec. 43. And now I am to consider THE SECOND GENERAL BRANCH of this head, *viz.* In what cases such killing shall be adjudged murder which happens in the execution of an unlawful action, principally intended for some other purpose, and not to do a personal injury to him in particular who happens to be slain.
Prin. P. L. 226.

And this I shall consider in the following instances :

1. Where the principal intention is to commit another felony.

2. Where the principal design is to commit a bare breach of the peace not intended against the person of him who happens to be slain.

3. Where the chief motive is to assist a third person.

4. Where the direct design is to escape from an arrest.

5. Where the principal purpose is to usurp an illegal authority.

6. Where no mischief is intended at all.

As to THE FIRST PARTICULAR, *viz.* Such killing as happens in the execution of an unlawful action, whereof the principal intention was to commit another felony.

Sec. 44. It seems agreed, that wherever a man happens to kill another in the execution of a deliberate purpose to commit any felony, he is guilty of murder; as where a person shooting at tame fowl, with an intent to steal them, accidentally kills a man; or where one sets upon a man to rob him, and kills him in making resistance; or where a person shooting at, or fighting with one man, with a design to murder him, misses him and kills another.

Sec. 45. And not only in such cases where the very act of a person having such a felonious intent, is the immediate cause of a third person's death, but also where it any way occasionally causes such a misfortune, it makes him guilty of murder; and such was the case of the husband who gave a poisoned apple to his wife, who eat not enough of it to kill her, but innocently, and against the husband's will and persuasion, gave part of it to a child, who died thereof (*a*): such also was the case of the wife who mixed ratbane in a potion sent by an apothecary to her husband, which did not kill him, but afterwards killed the apothecary, who to vindicate his reputation tasted it himself, having first stirred it about (*b*). Neither is it material in this case, that the stirring of the potion might make the operation of the poison more forcible than otherwise it would have been; for inasmuch as such a murderous intention, which of itself perhaps in strictness might justly be made punishable with death, proves now in the event the cause of the king's losing a subject, it shall be as severely punished as if it had had the intended effect, the missing whereof is not owing to any want of malice, but of power.

Sec. 46. But if one happen to be poisoned by ratbane laid in order to destroy vermin, the person by whom he is so killed is guilty of homicide *per infortunium* only, because his intentions were wholly innocent.

Sec. 47. Also if a third person accidentally happen to be killed by one engaged in a combat with another upon a sudden quarrel, it seems that he who kills him is guilty of manslaughter only.

Sec. 48. But it hath been adjudged, that if a justice of peace, constable, or watchman, or even a private person, be killed

1. Hale 463.
474.
Kely. 117.
Prin. P.L. 225.
Dalt. c. 93.
Moor 87.
Plow. 101.

3. Inst. 51.
1. Hale 436.
441. 467.

(a) The case
of John Sanders,
Plowd.
474.

(b) Agnes
Gore's Case,
9. Co. 81.

Plow. 474.
9. Co. 81.
1. Hale 431.

1. Hale 441.
446. 457.
Dalt. c. 93.
F. Cor. 189.
Savil 67.
Kely. 66.

22. Aff. 71.
4. Co. 40.
9. Co. 68.

Crom. 25. Foster 3-8, 309.
killed

killed in endeavouring to part those whom he sees fighting, the person by whom he is killed is guilty of murder; and that he cannot excuse himself by alledging that what he did was in a sudden affray in the heat of blood, and through the violence of passion; for he who carries his resentment so high as not only to execute his revenge against those who have affronted him, but even against such as have no otherwise offended him but by doing their duty, and endeavouring to restrain him from breaking through his, shews such an obstinate contempt of the laws, that he is no more to be favoured than if he had acted in cool blood.

Kely. 66. 115. *Sec7.* 49. Yet it hath been resolved, that if the third
Fol. 310, 311. person slain in such a sudden affray do not give notice
Staunf. 173. for what purpose he comes, by commanding the parties in
1. Hale 442. the king's name to keep the peace, or otherwise manifestly
460, 461. shewing his intention to be not to take part in the quarrel,
Ld. Ray. 1296. but to appease it, he who kills him is guilty of manslaughter
only, for he might suspect that he came to side with his ad-
versary.

Fol. 135. 311. † *Sec7.* 50. But if the person interposing in such case be
an officer within his proper district, and known, or but
generally acknowledged to bear the office he assumeth, the
law will presume that the party killing had due notice of his
intent, especially if it be in the day-time.

As to THE SECOND INSTANCE of this kind, *viz.* Such
killing as happens in the execution of an unlawful action,
where the principal design is to commit a bare breach of the
peace, not intended against the person of him who happens
to be slain.

S. P. C. 17. *Sec7.* 51. It seems clear, that regularly, where divers
1. Hale 442, persons resolve generally to resist all opposers in the com-
443-463-534- mission of any breach of the peace, and to execute it in
Sav. 67. such a manner as naturally tends to raise tumults and af-
Moor 86. frays, as by committing a violent disseisin with great num-
Palm. 35. bers of people, hunting in a park, &c. and in so doing
Crom. 24, 25. happen to kill a man, they are all guilty of murder; for
5. Mod. 289. they must at their peril abide the event of their actions
Dyer 128. who wilfully engage in such bold disturbances of the public
peace, in open opposition to, and defiance of, the justice of
the nation.

Foster 354. † *Sec7.* 52. But in such case the fact must appear to have
9. St. Tr. 715. been committed strictly in prosecution of the purpose for
which the party was assembled; and therefore if divers persons
be engaged in an unlawful act, and one of them with malice
pre-

prepenſe againſt *one* of his companions, finding an opportunity, kills him, the reſt are not concerned in the guilt of that act, becauſe it hath no connection with the crime in contemplation (*a*). So where two men were beating another man in the ſtreet, and a ſtranger made ſome obſervation upon the cruelty of the act, upon which one of the two men gave him a mortal ſtab with a knife; both the men were indicted as principals in the murder, yet, although both were doing an unlawful act in beating the man, as the death of the ſtranger did not enſue upon that act, and it appearing that only one of them intended any injury to the perſon killed, the judges were of opinion that the other could not be guilty either as principal or acceſſary, and he was acquitted (*b*).

(*a*) Prin. P. L. 237.

Kely. 112.

(*b*) See Rex v. Hodgſon,

Cafes C. L. 6. Rex v. Thompson, Kely. 66. 8. Mod. 164. 12. Mod. 236. 629.

Sec. 53. Yet where divers rioters having forcible poſſeſſion of a houſe, afterwards killed a perſon whom they had ejected, as he was endeavouring in the night forcibly to regain the poſſeſſion, and to fire the houſe, they were adjudged guilty of manſlaughter only, notwithstanding they did the fact in maintenance of a deliberate injury; perhaps for this reaſon, becauſe the perſon ſlain was ſo much in fault himſelf.

Crom. 28.

1. Hale 440.

Foſter 312.

Sec. 54. But if in ſuch or any other quarrel, whether it were ſudden or premeditated, a juſtice of peace, conſtable, or watchman, or even a private perſon, be ſlain in endeavouring to keep the peace and ſuppreſs the affray, he who kills him is guilty of murder; for notwithstanding it was not his primary intention to commit a felony, yet inasmuch as he perſiſts in a leſs offence with ſo much obſtinacy, as to go on in it to the hazard of the lives of thoſe who no otherwiſe offend him but by doing their duty in maintenance of the law, which therefore affords them its more immediate protection, he ſeems to be in this reſpect equally criminal, as if his intention had been to commit a felony.

Dalt. c. 93.

3. Inſt. 52.

Kely. 66.

22. Aff. 71.

4. Co. 40.

9. Co. 68.

Crom. 25.

As to THE THIRD INSTANCE of this kind, viz. Such killing as happens in the execution of an unlawful action, the principal motive whereof was to aſſiſt a third perſon.

Sec. 55. It ſeems clear, that if a maſter, maliciously intending to kill another, take his ſervants with him, without acquainting them with his purpoſe, and meet his adverſary and fight with him, and the ſervants ſeeing

1. Hale 437.

Plow. 100.

Crom. 23.

Dalt. c. 93.

Savil 67.

their Palm. 30.

their master engaged take part with him, and kill the other, they are guilty of manslaughter only, but the master of murder.

Crom. 26.
Dalt. c. 94.
1. Roll. 407.
3. Bulst. 206.
Cowp. 832.

Secd. 56. And therefore it follows, *à fortiori*, that if a man's servant or friend, or even a stranger, coming suddenly, and seeing him fighting with another, side with him and kill the other, or seeing his sword broken send him another, wherewith he kills the other, he is guilty of manslaughter only.

Kely. 67. 86.
Fost. 318, 319.
12. Mod. 361.

Secd. 57. Yet in this very case, if the person killed were a bailiff or other officer of justice, resisted by the master, &c. in the due execution of his duty, such friend or servant, &c. are guilty of murder, whether they knew that the person slain were an officer or not.

Secd. 58. But perhaps it may be objected, that in this last case there seems to be no more malice than in the former; and such third person being wholly ignorant that the party killed was an officer, seems to be no more in fault than if he had been a private person.

Fost. 271. 309.
§ 18.

1. Sid. 160.
Noy 50.

Plow. 100.

Secd. 59. To this it may be answered, that all fighting is highly unlawful, and that he, who on a sudden seeing persons engaged in it, is so far from endeavouring to part them, as every good subject ought, that he takes part with one side, and fights in the quarrel without knowing the cause of it, shews a high contempt of the laws, and a readiness to break through them on a small occasion, and must at his peril take heed what he does, and consequently might, perhaps, in strict justice, be adjudged in the foregoing cases to act with malice, which doth not always signify a particular ill-will against the person killed, as appears by many of the abovementioned cases; and though such person be favoured in respect of the suddenness of the occasion, where both the quarrel and the persons are private, yet he must not expect such indulgence where the fight, in which he so rashly engages, was begun in open opposition to the justice of the nation, and a person happens to be killed thereby who engaged in maintenance thereof, and on that account is under its more particular care; and may justly challenge, that his opposers be made examples, to deter others from joining in such unwarrantable quarrels.

Sect. 60. But if a man seeing another arrested and restrained from his liberty, under colour of a preſs-warrant or civil proceſs, &c. by thoſe who in truth have no ſuch authority, happen to kill ſuch trefpaſſers in reſcuing the perſon oppreſſed, he ſhall be adjudged guilty of manſlaughter only, notwithstanding the injured perſon ſubmitted to them, and endeavoured not to reſcue himſelf, and the perſon who reſcued him did not know that he was illegally arreſted; for ſince in the event it appears that the perſons ſlain were trefpaſſers, covering their violence with a ſhow of juſtice, he who kills them is indulged by the law, which in theſe caſes judges by the event, which thoſe who engage in ſuch unlawful actions muſt abide at their peril.

Kely. 60. 137.
Crom. 27.
Ld. Ray. 1296.
Holt 485.
But the principles upon which this caſe was decided, are very elegantly and ſtrongly controverted by Mr. Juſtice Foſter, p. 315 to 318.

As to THE FOURTH INSTANCE of this kind, viz. Such killing as happens in the execution of an unlawful action, whereof the direct deſign was to eſcape from an arreſt.

Sect. 61. It ſeems to be agreed, that whoever kills a ſheriff, or any of his officers, in the lawful execution of a civil proceſs, as on arreſting a perſon upon a *capias*, &c. is guilty of murder.

2. Hale c. 83.
Dalr. c. 93.
1. Hale 463.
Crom. 24.
Strange 490.
6. St. Tr. 195. Foſter 29. 135. 302.

Sect. 62. Neither is it any excuſe to ſuch a perſon that the proceſs was erroneous (for it is not void by being ſo), or that the arreſt was in the night, or that the officer did not tell him for what cauſe he arreſted him, and out of what court (which is not neceſſary when prevented by the party's reſiſtance); or that the officer did not ſhew his warrant, which he is not bound to do at all if he be a bailiff commonly known, nor without a demand if he be a ſpecial one.

9. Co. 66. 68.
C. Jac. 280. 486.
1. Hale c. 457.
458. 462.
Foſt. 137. 311.
312 318.
2. Hawk.
P. C. c. 13.
f. 28.
2. Hale c. 85.
6. Co. 18, 69.

Sect. 63. Yet the killing of an officer in ſome caſes will be manſlaughter only; as

Sect. 64. FIRST, Where the warrant by which he acts gives him no authority to arreſt the party; as where a bailiff arreſts "*J. S. a baronet*" who never was knighted, by force of a warrant to arreſt "*J. S. knight*."

C. Car. 372.
537.
1. Hale 56.
457. 460.
1. Jon. 346.
1. Lev. 91. 12. Co. 49. Jones 429. 4. Inſt. 333.

Sect. 65. SECONDLY, Where a good warrant is executed in an unlawful manner; as if a bailiff be killed in breaking

6. Mod. 173.
Ld. Raym.
1028.
2. Roll. 137. Palm. 52. 1. Hale 458. 5. Co. 93. 2. Hale 117. 470. Salk. 79.
Foſter's Crown Law 311. 319.

open a door or window to arrest a man ; or perhaps if he arrest one on a *Sunday* since 29. Car. 2. c. 7. by which all such arrests are made unlawful.

Peace-officers having a *legal* warrant to arrest for a breach of the peace, may break open doors, after having given due notice and demanded admittance, Foster 136. but they cannot justify breaking open *outward* doors or windows to execute a civil suit, Fost. 319, 320. Cowp. 3. Therefore, where a man, who had been arrested, by the artful contrivance of an officer, upon civil process (that of the warrant having been filled up after it had been sealed), obliged the officer to decamp by snapping a pistol at him three times ; but the officer returning to the house, accompanied by the plaintiff and the attorney, and all three attempting to force in, the man within fired a gun through the door and shot the attorney, it was ruled manslaughter only, 10. St. Tr. 462. Fost. 311, 312. See the arguments in the London Magazine for August 1759. See also the case of Mary Adey, Cases in C. L. 2d Edit. 188. and the Gordons' case, Cases Cro. Law 412.

AS TO THE FIFTH INSTANCE of this kind, *viz.* Such killing as happens in the execution of an unlawful action, whereof the principal purpose was to usurp an illegal authority.

Vide sup c.
28. l. 5.

Self. 66. It seems clear, that if persons take upon them to put others to death, either by virtue of a new commission wholly unknown to our laws, or by virtue of any known jurisdiction which clearly extends not to cases of this nature, as if the court of common pleas cause a man to be executed for treason or felony, or the court martial, in time of peace, put a man to death by the martial law, both the judges and officers are guilty of murder.

Douglas 200.

Self. 67. But where persons act by virtue of a commission, which if it were strictly regular would undoubtedly give them full authority, but happens to be defective only in some point of form, it seems that they are no way criminal.

AS TO THE SIXTH INSTANCE of this kind, *viz.* Such killing as happens in the execution of an unlawful action, where no mischief was intended at all.

C. 29. c. 12.

3. Inst. 57.

12. Mod. 628.

Ld Ray. 143.

Prin. P. L. 236.

Self. 68. It is said, that if a person happen to occasion the death of another, inadvisedly doing any idle wanton action, which cannot but be attended with the manifest danger of some other ; as by riding with a horse, known to be used to kick, among a multitude of people, by which he means no more than to divert himself by putting them into a fright, he is guilty of murder.

Sec. 69. Also it hath been anciently holden, that if a person not duly authorised to be a *physician* or *surgeon*, undertake a cure and the patient die under his hand, he is guilty of felony ; but inasmuch as the books wherein this opinion is holden were written before the statute of 23. Hen. 8. c. 1. which first excluded such felonious killing as may be called wilful murder of malice prepense, from the benefit of clergy, it may be well questioned whether such killing shall be said to be of malice prepense, within the intent of that statute.

Sec. 70. However, it is certainly highly rash and presumptuous for unskilful persons to undertake matters of this nature ; and indeed the law cannot be well too severe in this case, in order to deter ignorant people from endeavouring to get a livelihood by such practice, which cannot be followed without the manifest hazard of the lives of those who have to do with them : but surely the charitable endeavours of those gentlemen who study to qualify themselves to give advice of this kind, in order to assist their poor neighbours, can by no means deserve so severe a construction from their happening to fall into some mistakes in their prescriptions, from which the most learned and experienced cannot always be secure.

ing to this head, see the chapter of *Principals and Accessories*, in the fourth volume.

S. P. C. 16.
Pulton 22.
Crom. 27.
43. Ed. 3. 33.
F. Cor. 163.
Britt. c. 5.
4 Inst. 251.

1. Hale 429,
430.

See Dalt. c. 93.
4. Com. 197.

For other particulars relating

CHAPTER THE THIRTY-SECOND.

O F

P E T I T - T R E A S O N .

AT common law not only the offences specified in the twenty-fifth of *Edward the Third*, but many others also were esteemed petit treasons, which are not so at this day; as (a) piracy by a subject; (b) discovery of the king's counsel by one of the grand jury; (c) an attempt by a wife to kill her husband, &c.

3. Inst. 20, 21. (a) 40. Aff. 35. Inf. c. 37. f. 2. (b) 27. Aff. 63. 3. Inst. 22. Dalt. c. 91. (c) S. P. C. 10. See 1. Hale 377. to 382.

Stat. 1. But by 25. Edw. 3. ft. 5. c. 2. no offence shall be adjudged petit treason, except in the following instances :

1. Where a servant kills his master,
2. Where a wife kills her husband.
3. Where an ecclesiastical man, secular or religious, kills his prelate to whom he owes obedience.

Stat. 2. And this statute hath been so strictly construed, that no other case whatsoever, which cannot be brought within the meaning of these words, however it may be in its own nature more heinous, shall, by parity of reason, be expounded to be within the equity of them; and therefore the murder of a father by a son shall not be punished as petit treason, unless the son may, by a reasonable construction, come under the word "servant," serving the father for meat, drink, cloaths, or wages, in which case he shall be indicted by the name of a servant.

Stat. 3. Yet the murder of a mistress, or of a master's wife, has been adjudged petit treason within this statute; for notwithstanding the person slain can in neither of these cases, in good grammar, come under the word "*master*," yet they are clearly within the meaning thereof, being used here to signify any person to whom another stands related as a servant,

Stat.

33. Aff. 7.
B. Cor. 116.
S. P. C. 10.
Flow. 260.
1. Co. 99.
3. Inst. 20.

Sett. 4. Also the murder of a person by one who was his servant, upon malice conceived during the service, though it be not within the express words, is within the meaning of them, inasmuch as it is but the execution of the treasonable intention of the party while he was a servant.

3. Inst. 20,
21. 138.
1. Hale 379.
Dyer 332.

Sett. 5. Also the procuring, aiding, or abetting, of any of these offences, is clearly punishable within the meaning of this act, in the same manner as it was before; for the plain intent of the statutes is only to restrain the judges from proceeding against other crimes, as petit treasons, but no way to alter the law as to these; and therefore it seems agreed, that persons accused of petit treason shall be construed to be either not guilty at all, or principal or accessory according to the known rules of law in other cases.

1. Hale 378.
280.
Dalif. 16.
Dalt. c. 91.
Crom. 19, 20.

Sett. 6. And from hence it follows, that if the fact appear to have been done upon a sudden falling out, or in the party's necessary self-defence, &c. it cannot be petit treason; for inasmuch as all petit treason implies murder, and is the highest degree thereof, wherever the circumstances do not make the offence murder, they cannot make it petit treason; and *vice versa*, generally wherever the circumstances are such as will make the killing of a stranger by a stranger murder, they make the killing of a husband or master, &c. petit treason.

Dyer 254.
B. Cor. 119.

40. Aff. 25.
3. Inst. 20,
21. 139.

Crom. 19.
Dy. 128. 332.
Moor 91.
Dalif. 16.

Sett. 7. Yet it hath been adjudged, that if a wife or servant procure a stranger to kill the husband or master, in the absence of such wife or servant, neither the procurer nor actor are guilty of petit treason, but of murder only; because it is an allowed maxim, that *the offence of an accessory can never be of a higher kind than that of the principal*; but it seems clear, that if the wife or servant be either actually present when the crime is done, or present only in judgment of law, as being in the same house, but not in the same room, (in which case the hopes of their immediate assistance encourages and emboldens the murderer to commit the fact, which otherwise perhaps he would not have dared to do, and makes them guilty in the same degree, as if they had actually stood by with their swords drawn, ready to second the villainy) such wife, or servant, being principals as much as the stranger, are guilty of petit treason, and the stranger of murder.

1. Hale 382.
Dyer 332.
Crom. 41.
Dalif. 16.

Sett. 8. But it is said, that if a wife procure a servant to kill the husband, both are guilty of petit treason: and even if a stranger procure a wife, or servant, to kill the husband or master, it seems that he may be indicted as accessory to petit treason.

Sett.

Sec. 9. A wife divorced *causâ adulterii vel sævitæ*, is still within this law, because the bond of matrimony is not thereby dissolved, and she may again lawfully cohabit with her husband. But a divorce *causâ consanguinitatis vel præcontractûs*, entirely dissolves the nuptial tie, and annihilates the very character of wife. Therefore, a wife *de facto* only, and not *de jure*, cannot commit this crime, for she has no lawful lord to whom she owes subjection and obedience. Neither can a husband be guilty of this crime by killing his wife *de jure*, for there is no reciprocity of obedience and subjection.

† *Sec. 10.* A clergyman living and beneficed in one diocese who kills the bishop or metropolitan of that diocese, or of the diocese where he may be beneficed by dispensation, or the bishop who ordained him, may be guilty of this offence; for a canonical obedience results both from institution and ordination. 1. Hale 378. 382. 4. Comm. 204.

† *Sec. 11.* Principals in this offence were first debarred the benefit of clergy by 12. Hen. 7. c. 7. and accessaries both before and after, by 4. and 5. Philip and Mary, c. 4.

The law considers *petty treason* and *murder* as one offence, differing only in circumstance and degree; Fost. 327. Cases in Cro. Law, 2d Edit. 363. and the principles that govern in the case of murder, are equally applicable to petty treason, 4. Comm. 204. An appeal of death will lie, and *autrefois acquit*, or attain in murder, is a good bar in petit treason, and *à converso*, 2. Hale 246. 232. 3. Inst. 213. It is included in a pardon under the name of murder, 1. Hale 378. And the offender may be indicted either for petty treason, murder, or manslaughter, and tried and found guilty on such indictment, of either of those crimes respectively, according as the case may appear upon the evidence, 1. Hale 378. Fost. 326. Henrietta Radbourn's Case, Cases in Cro. Law, 363.

But if the prosecutor be apprized of the real case, he ought to adapt the bill to the truth of the fact, Fost. 104. 326. For though the offences are to most purposes considered as substantially the same, yet there is at common law some difference with regard to the judgment, and a very material one with regard to the trial, Fost. 327. The punishment is, in a man, to be drawn and hanged; and in a woman, it was at common law, to be drawn and *burned*; 1. Hale 382. 3. Inst. 311. But by 30. Geo. 3. c. 48. the punishment of *burning* is abolished: see vol. iv. ch. 48. s. 6. And, on the trial, the prisoner is intitled to a peremptory challenge of thirty-five, Fost. 327. Two witnesses also are required both on the indictment and at the trial, 1. Edw. c. 12. Fost. 337. And the 5. and 6. Edw. 6. c. 11. by general words extending to all treasons, requireth that the witnesses, *if living*, shall be examined in person upon the trial in open court. Depositions therefore taken before the coroner, or informations taken by a justice of peace, are not evidence whereon to ground a conviction of petit treason, *if the party be living*, though unable to travel, or kept out of the way by the prisoner, or his procurement. Fost. 337. See Radbourn's Case, Cases in Cro. Law 363.

CHAPTER THE THIRTY-THIRD.

OF

SIMPLE LARCENY.

AND now we are come to offences against *the goods of* another, which are generally called larcenies, from the *Latin* word *latrocinium*, of which there are two kinds :

1. Simple Larceny.
2. Mixed Larceny.

SIMPLE LARCENY is also of two kinds,

1. Grand larceny.
2. Petit larceny.

SIMPLE GRAND LARCENY is a felonious and fraudulent *Dalt. c. 1074* taking and carrying away, by any person, of the mere personal goods of another, not from the person, nor out of his *Hale 503,* house, above the value of twelve-pence.

For the better explication of which definition, I shall consider the several parts of it; as,

1. What shall be said to be a felonious and fraudulent taking.

2. What shall be said to be a carrying away.

3. By whom the offence may be committed.

4. What are such goods the taking whereof may be felonious.

5. How far such goods ought to belong to another.

6. Of what value they must be.

† 7. Where the offence of larceny may be tried.

† 8. In what cases simple grand larceny is deprived of the benefit of clergy.

As

As to THE FIRST POINT, viz. What shall be said to be a felonious and fraudulent taking.

Kely. 24. *Sett.* 1. It is to be observed, that all felony includes
B. Cor. 45, 48. trespass; and that every indictment of larceny must have
58. 137. 160. the words *felonice cepit*, as well as *asportavit* (a); from
(a) If a horse whence it follows, that if the party be guilty of no trespass
be stolen, the in taking the goods, he cannot be guilty of felony in carry-
indictment ing them away.
should run
"cepit et abduxit;" if a sheep, &c. "*cepit et effugavit.*" 1. Hale 504. C. Cir. Com. 320.

3. Inst. 102. *Sect.* 2. And from this ground it hath been holden, that
1. Hale 504. one who finds such goods as I have lost, and converts them
13. Ed. 4. 9, 10. to his own use *animo furandi*, is no felon; and *à fortiori*,
S. P. C. 25. therefore it must follow, that one who has the actual
possession of my goods by my delivery for a special purpose,
as a carrier who receives them in order to carry them to a
certain place; or a taylor who has them in order to make
me a suit of cloaths; or a friend who is intrusted with them
to keep for my use; cannot be said to steal them, by em-
bezzling of them afterwards.

S. P. C. 25. *Sett.* 3. And herein our law differs from the civil, which,
See Exod. agreeably to the *Mosaical law*, having no capital punishment
xxii. for bare thefts, deals with offences of this kind as such, as
in strict justice most certainly it may; but our law, which
punishes all theft with death if the thing stolen be above
the value of twelve-pence, and with corporal punishment if
under, rather chuses to deal with them as civil than criminal
offences, perhaps for this reason in the above-mentioned
case, concerning goods lost, because the party is not much
aggrieved where nothing is taken but what he had lost be-
fore; and for this cause in the other cases, concerning the
embezzling of goods delivered to another by the owner, be-
cause the party being intrusted with the whole possession,
it may be presumed that both the offender and his offence
are known, and consequently the person injured is supposed
to have a remedy by action against him; from which
consideration some have made it part of the definition of
larceny, that it be committed *without the knowledge of the
owner*; and it seems rigorous to have recourse to severe
laws, where, probably, more gentle ones will be effectual.

Dalt. c. 101. *Sect.* 4. And agreeably hereto it has been resolved, that
Bract. 1. 3. 150. even those who have the possession of goods by the delivery
Fleta l. 1. 36. of the party, may be guilty of felony by taking away part
2. Hale 290. thereof, with an intent to steal it; as if a carrier open a
1. Hale 505. pack and take out part of the goods; or a weaver who has
13. E. 4. 9, 10. received silk to work; or a miller who has corn to grind,
S. P. C. 25. take
Dalt. c. 102.
Kely. 35.
1. R. Abr. 73.

take out part with an intent to steal it; in which cases it may not only be said that such possession of a part distinct from the whole was gained by wrong, and not delivered by the owner, but also that it was obtained basely, fraudulently, and clandestinely, in hopes to prevent its being discovered at all, or fixed upon any one when discovered.

† *Seet. 5.* So also if a parcel be left accidentally in a hackney-coach, and the coachman, instead of restoring it to the owner, detains it, opens it, destroys part of its contents, and pledges the rest, with an intention to convert them to his own use, he is guilty of larceny.

Winn's Case, Cases C. L. 320.
S. P. Sear's Case, Cases C. L. 322. *novis.*

Seet. 6. Also it seems generally agreed, that one who has the *bare charge*, or the *special use* of goods, but not the *possession* of them; as a shepherd who looks after my sheep, or a butler who takes care of my plate, or a servant who keeps the key to my chamber, or a guest who has a piece of plate set before him in an inn, may be guilty of felony, in fraudulently taking away the same; for in all these cases the offence may as properly come under the word "*cepit*;" the injury to the owner is as great, and the fraud as secret, and the villainy more base, than if it had been done by a stranger.

3. H. 7. 12.
21. H. 7. 14.
B. Cor. 58. 137.
S. P. C. 25.
Dalt. c. 152.
2 Moor 246.
Pop. 84.
1. Hale 505.
667.

† *Seet. 7.* So also, if the clerk to a banker or merchant have the care of money, or if he have access to it for special and particular purposes, and is sent to the bag or drawer for money, for the purpose of paying a bill, or if he is sent for the purpose of bringing money generally out of that bag or drawer, and, at the time he brings that money, he clandestinely and secretly takes out other money for his own use, he is as much guilty of a felony as if he had had no care of the money, or access to the bag or drawer whatsoever.

Rex v. Murray, Old Bailey, October Session, 1784.

† *Seet. 8.* So also where a person being left in an apartment, pawns the furniture or other property under his care, with a felonious design to steal it, it is felony.

Tatum's Case. O. B. May Session, 1795. But see post.

Ch. 43. page 327. sect. 10.

† *Seet. 9.* And, in general, where the delivery of the property is made for a certain, special, and particular purpose, the possession is still supposed to reside, unparted with, in the first proprietor. Therefore, where a master delivers goods to his servant to carry to a customer, but instead of so doing he converts them, on his way, to his own use. it is a felonious taking; for the master had a right to countermand the delivery of them, and therefore the possession remained in him at the time of the conversion.

Bass's Case, Cases in Cro. Law, 215.

(a) O.B. 1779, No. 83. *† Sect. 10.* So also, if a watch-maker steal a watch delivered to him to clean (a); or if one steal cloaths delivered for the purpose of being washed (b); or goods in a chest delivered with the key for safe custody (c); or guineas delivered for the purpose of being changed into half-guineas (d); or a watch delivered for the purpose of being pawned (e): in all these instances, the goods taken have been thought to remain in the possession of the proprietor, and the taking of them away held to be felony.

(c) Cases Cro. Law 310.

3. Inst. 107. *Sect. 11.* Also it seems clear, that if a carrier, after he has brought the goods to the place appointed, take them away again secretly *animo furandi*, he is guilty of felony; because the possession which he received from the owner being determined, his second taking is in all respects the same as if he were a mere stranger.

1. Hale 507. *Sect. 12.* And not only he who first lays his hands on my goods himself, but in many cases he who receives them from another, may be guilty of feloniously taking them; as if a person intending to steal my horse, take out a *replevin*, and thereby have the horse delivered to him by the sheriff; or if one intending to rifle my goods, get possession from the sheriff, by virtue of a judgment obtained, without any the least colour or title, upon false affidavits, &c. in which cases the making use of legal process is so far from extenuating that it highly aggravates the offence, by the abuse put on the law, in making it serve the purposes of oppression and injustice.

13. E. 4. 3. *Sect. 13.* Also he who steals my goods from J. S. who had stolen them before, may be indicted, or appealed, as having stolen them from me, because, in judgment of law the possession as well as the property always continued in me.

† Sect. 14. And it seems, that where the property is obtained with a *preconcerted design to steal it*, the possession is supposed to continue with the true owner, whatever may be the means or the pretence under which the property is obtained.

(f) Raym. 276. *† Sect. 15.* Therefore where a person goes into a shop under pretence of buying goods, (f) and they are delivered to him to look at, and he then runs away with them; or where a person goes into a market and obtains a horse for the purpose of trying its paces, (g) and rides away with it, it is felony.

† Sect.

† *Self. 16.* So also if a person hire a horse of a livery-stable-keeper, to go to a particular place, and promise to re- turn in the evening of the same day, but instead of so doing, immediately sells the horse, and converts the money to his own use, it is felony. Case of John Pears, Old Bailey, Sept. Self 1779, after C. L. 129.

† *Self. 17.* So also where a person hired a post-chaise for three weeks or a month, to go a tour round the North, for the use of which it was agreed that he should pay at the rate of five shillings a day during the time that he kept it; and that, on his return, if he chose to keep it, the price was fifty guineas, and he went away with it, and never returned it, it was determined to be larceny. Major Semple's Case, Old Bailey, July Self 1786. Cases C. L. 327.

† *Self. 18.* So where a person left a note at a hosier's shop, desiring that he would send some silk stockings to his lodgings to look at, and looked out three pair, and went away with them while the hosier, by his desire, went home to fetch other goods, he was adjudged guilty of larceny. Sharpless and Greatrex's Case, Old Bailey, May Self 1772. Cases C. L. 88.

† *Self. 19.* So where *A.* obtained a bill of exchange from *B.* under a pretence of discounting it, but instead of so doing converted it to his own use. Aickle's Case. Cases Cro. Law 139.

† *Self. 20.* So also to obtain the delivery of money with a design feloniously to take it away, under the false pretence of having found a diamond ring of great value, or, as it is called, by the practice of *ring-dropping*, has been determined to be a taking from the possession of the owner. Rex v. Patch, Cases C. L. 206.

† *Self. 21.* So also where the prisoner decoyed the pro- secutor into a public-house, and introduced the play of cut- ting cards, and then, under pretence of having won, swept the prosecutor's money into his hand, and run away with it. Rex v. Horner, Cald. Rep. 295.

† *Self. 22.* So where a tradesman delivered a parcel of goods to his servant to carry to a customer, and the prisoner contrived to meet the servant on his way, and on pretence that he was going, by the desire of the customer, to the master's shop, to fetch this parcel in lieu of another, obtained the delivery of it, by exchanging it for a parcel of old rags of no value, which he had purposely with him, it was determined to be a felonious taking of the property from the possession of the master. Wilkins's Case, Old Bailey April Self 1789, on a case re- served.

† *Self. 23.* But if it appear that the horse, chaise, or (a) other property was fairly and *bona fide* hired (a), or that the goods were really sold, and a credit given to the party, (a) Charleswood's Case, Cases C. L. 217.

(a) Pepper's party (a), or that the person actually played at cards on his own Case, O. B. account, and lost the money (b), the property in such cases Cst. Sess. 1793: is changed, and the possession of it out of the first owner, (b) Rex v. and therefore the fraudulent conversion of it afterwards cannot be felony; for to constitute larceny, the felonious design Nicholson, Jones, and must exist at the time the property is obtained. Chapple, O. B. Jan. Sess. 1794, *coram* MACDON A.D., Chief Baron, present GROSSE and ROOKE, Justices.

See the case of *Sect. 24.* It seems not to have been clearly settled at Rex v. Meers, common law, whether a lodger who stole the furniture of 1. Show. 50. his lodgings, were indictable as a felon, inasmuch as he where in Trinity Term, 1. had a kind of special property in the goods, and was to Will. & Mary, pay the greater rent in consideration of them; but if it had this question appeared clearly, from the whole circumstances of the case, was argued on a special verdict, and determined to be no felony. of riddling it, and to elude the justice of the law, by endeavouring to keep out of the letter of it, by gaining a possession of the goods with the consent of the owner, I cannot see any good reason why such a person should not be esteemed as much a felon as a mere stranger, inasmuch as his whole design was to defraud the law, and the consent of the owner was grounded on a supposition of his coming as a lodger, and could never have been gained if the truth had appeared; which the party shall get no advantage by falsifying; and it brings a contempt upon the justice of the nation to suffer its laws to be evaded by such little contrivances. However, this question is now settled by the statute 3. and 4. Will. and Mary, c. 9. which, together with other statutes making *breaches of trust* felonies, will be more fully considered in treating of *Felonies by Statute* (c).

(c) See post. page 325. Chap. 33.

AS TO THE SECOND POINT, *viz.* What shall be said to be such a carrying away of the thing stolen, as will bring the case within the word *asportavit*.

2. Inst. 108.
2. Vent. 215.
7. Aff. 39.
S. P. C. 26.
B. Cor. 107.
3. Inst. 109.
1. Hale 508.
Dalt. 27.
Crem. 36.

Sect. 25. The word "*asportavit*" is necessary in every indictment of larceny; and it seems, that any the least removing of the thing taken from the place where it was before, is sufficient for this purpose, though it be not quite carried off; and upon this ground the guest, who, having taken off the sheets from his bed with an intent to steal them, carried them into the hall, and was apprehended before he could get them out of the house, was adjudged guilty of larceny.

Dalt. p. 501.
Kely. 31.

Sect. 26. So also was he who having taken a horse in a close with an intent to steal him, was apprehended before he could get him out of the close.

Sect.

Sec. 27. Neither is he less guilty who pulls off the wool from another's sheep, or (a) strips their skins, with an intent to steal them.

(a) See Martin's Case, Cases C. L. 2d edit. 158.

Sec. 28. So also is he who intending to steal plate, takes it out of a trunk wherein it was, and lays it on the floor, and is surprised before he can carry it off.

Kely. 31.
1. Hale 503.

† *Sec. 29.* So also where a man, with a felonious intention, had removed goods from the head to the tail of a waggon, it was held a sufficient removal to constitute a carrying away.

Collet's Case, Cases C. L. 204.

† *Sec. 30.* So also where a diamond ear-ring was snatched from a lady's ear, but lodged in the curls of her hair, it was held to be a sufficient asportation, although it was not taken away by the thief.

Lapier's Case, Cases C. L. 264.

† *Sec. 31.* But where a man was indicted for stealing the contents of a bale of goods in a waggon, and it appeared that the bale laid horizontally, and that he had set it on its end, but had not removed it from the spot, it was held, upon a case reserved, not to be a sufficient carrying away.

Cases C. L. 204. *note*.

As to THE THIRD POINT, *viz.* By whom larceny may be committed.

Sec. 32. It is certain, that a *feme covert* may be guilty thereof by stealing the goods of a stranger, but not by stealing her husband's, because a husband and wife are considered as one person in law; and the husband, by endowing his wife at the marriage with all his worldly goods, gives her a kind of interest in them; for which cause, even a stranger cannot commit larceny in taking the goods of the husband by the delivery of his wife; as he may by taking away the wife by force and against her will, together with the goods of the husband.

1. Hale 514.
637, 638.
Pult. 127.
B. Cor. 14, 77.
Dalt. c. 104.
13. Aff. 5.
18. B. 3. 32.
S. P. C. 94.
Crom. 35.

Sec. 33. It is said to be no felony for one reduced to extreme necessity, to take so much of another's victuals as will save him from starving; but if such his necessity be owing to his unthriftiness, surely it is far from being any excuse. † And this seems to be an unwarranted doctrine, borrowed from the notions of some civilians; at least it is now antiquated, the law of England admitting no such excuse at present. But a judge ought to be tender in these cases, and use much discretion and moderation.

Grotius de Jure, b. 2. c. 2. f. 6, 7.
Puffend. b. 2. c. 6.
Britton, c. 10.
Mirr. c. 4.
1. Hale 54, 565.
4. Comm. 31.

As to THE FOURTH POINT, *viz.* What are such goods, the stealing whereof may amount to felony.

Seft. 34. FIRST, They ought to be no way *annexed to the freehold*. And therefore it is no larceny, but a bare trespass, to steal corn or grass, growing, or apples on a tree, or lead on a church or house; but it is larceny to take them being severed from the freehold, whether by the owner, or even by the thief himself, if he sever them at one time, and then come again at another time and take them.— And the general reason of this distinction between chattels fixed to a freehold and those lying loose, perhaps may be this; because the former, not being to be removed without trouble and difficulty, are not so liable to be stolen, and therefore need not to be secured by so severe laws as the other require. † But many of the descriptions of property which come within this notion of an adherence to the freehold, being thereby placed in a situation extremely precarious and unprotected, the Legislature has from time to time imposed various penalties upon the stealing, injuring, or destroying of them; which will be fully considered in treating of *Felonies by Statute*.

Vide post.
page 341.
Ch. 45.

Seft. 35. SECONDLY, They ought to have some worth in themselves, and not to derive their whole value from the relation they bear to some other thing, which cannot be stolen, as paper or parchment on which are written assurances concerning lands, or obligations, or covenants, or other securities for a debt or other *chose in action*. And the reason wherefore there can be no felony in taking away any such thing seems to be, because, generally speaking, they being of no manner of use to any one but the owner, are not supposed to be so much in danger of being stolen, and therefore need not to be provided for in so strict a manner as those things which are of a known price, and every body's money; and for the like reason it is no felony to take away a villein, or an infant in ward, &c. † But stealing certain *choies in action* is now made felony by statute, which will be more fully considered under *Felonies by Statute*.

Strange 1133.
Seft. Cas. 378.
3. Inst. 109.
B. Cor. 155.
S. P. C. 45.
Crom. 27.
8. Rep. 33.
4. Comm. 434.
Stra. 1136.
Vide post.
page 339.
Ch. 44.

Seft. 36. THIRDLY, They ought not to be things of a base nature, as dogs, cats, bears, foxes, monkeys, ferrets, and the like, which, howsoever they may be valued by the owner, shall never be so highly regarded by the law, that for their sakes a man shall die; as he may for stealing a hawk, known to him to be reclaimed, not only by force of the statute of 37. Edw. 3. c. 19. but also at common law, in respect of that very high value which was formerly set upon that bird.

3. Inst. 101.
7. Co. 18.
3. H. 8. 3.
Crom. 36.
Halt. c. 103.
3. Hale 512.
4. Comm. 393.

† *Sect. 37.* But by the 10. Geo. 3. c. 18. stealing any dog or dogs of any kind or sort whatsoever from the owner thereof, or from any person entrusted by the owner therewith, or knowingly selling, buying, receiving, harbouring, keeping, or detaining any such dog or dogs, is a misdemeanor. Vide 2. Hawk. P.C. page 465 Ch. 91.

As to THE FIFTH POINT, *viz.* How far the goods taken away ought to belong to another.

Sect. 38. It seems agreed, that the taking of goods whereof no one had a property at the time, cannot be felony; and therefore, that he who takes away *treasure-trove*, or a wreck, waif, or stray, before they have been seized by the persons who have a right thereto, is not guilty of felony, and shall be only punished by fine, &c.—† But the offences of taking *treasure-trove* and plundering wrecks are now made felonies, and will be more fully considered under *Felonies by Statute*. 1. Hale 512. B. Cor. 190. 22. Aff. 99. 3. Inst. 108. S. P. C. 25. Vide post. Ch. 56.

Sect. 39. Neither shall he who takes a fish in a river or other great water, wherein they are at their natural liberty, be guilty of felony, as he may be who takes them out of a trunk or pond, &c.—† But the offence of taking and destroying fish is now punishable in different degrees by several statutes, according to the circumstances of each case, as shall be more fully shewn in treating of *Felonies by Statute*. Vide post. Ch. 46.

Sect. 40. Upon the like ground it seems clear, that a man cannot commit felony by taking deer, hares, or conies, in a forest, chase, or warren, or old pigeons being out of the house, &c. Vide post. Ch. 46. page 265.

Sect. 41. But it is agreed, that one may commit larceny in taking such or any other creatures *feræ naturæ*, if they be fit for food, and reduced to tameness, and known by him to be so; and it seems the most plausible opinion, that it is felony to steal wild pigeons in a dove-house that is up, or hares or deer in a house, or even in a park, inclosed in such a manner that the owner may take them whenever he pleases, without the least danger of their escaping, in which case they are as much in his power as fish in a pond, or young pigeons, or hawks in a nest, &c. in taking of which, for the like reason, it seems to be agreed, that felony may be committed.—† But the offences of taking or destroying deer and hares, will be more fully considered under *Felonies by Statute*. 7. Co. 18. 22. Aff. 95. 22. H. 6. 59. 18. Ed. 4. 8. 13. Cor. 92. 155. 164. S. P. C. 25. 3. Inst. 109. 18. H. 8. 2. Dalt. c. 92. Vide post. Ch. 46.

1. Hale 511. *Sect. 42.* Also it seems clear, that one may commit felony by taking away swans marked or pinioned; or those which are unmarked, if they be kept in a pond or private river; neither do I see why it is not as much felony to steal the eggs of such swans or hawks, as it is to steal their young ones, unless it be because 11. Hen. 7. c. 17. has appointed a less punishment for this offence.

7. Co. 17, 18. Dalt. c. 103. 3. Inst. 98, 109. By 31. Hen. 8. c. 12. it is felony to take hawks eggs out of any nests in the king's lands. This is repealed by the general words of 1. Mary, c. 1.

Sect. 43. However, there is no doubt but that the taking of domestick beasts, as horses, mares, colts, &c. (a) or of any creatures whatsoever, which are *domitiæ naturæ*, and fit for food, as ducks, hens, geese, turkeys, peacocks, or their eggs, or young ones, may be felony.

1. Hale 290. *Sect. 44.* Also it is said, that there may be felony in taking goods the owner whereof is unknown, in which case the king shall have the goods, and the offender shall be indicted for taking *bona cujusdam hominis ignoti*.

8. P. C. 25, 95. Dyer 99. Dalt. c. 103.

7. Ed. 4. 14, 15. *Sect. 45.* And it seems, that in some cases the law will rather feign a property, where in strictness there is none, than suffer an offender to escape; and therefore it is said, that he who takes away the goods of a chapel, or abbey, in time of Vacation, may be indicted, in the first case, for stealing *bona capellæ*, being in the custody of such and such; and in the second, for stealing *bona domus vel ecclesiæ*, &c.; and *à fortiori*, therefore it follows, that he who steals goods belonging to a parish-church, may be indicted for stealing *bona parochianorum*.

3. Inst. 110. B. Indict. 33. C. Eliz. 145. 179. 1. Hale 512.

Sect. 46. And it hath been adjudged, that he who takes off a throwd (b) from a dead corpse, may be indicted as having stolen it from him who was the owner thereof when it was put on; for a dead man can have no property.

3. Inst. 110. 12. Co. 113. 1. Hale 515. It is said, 2. Hale 290. and 8. Mod. 249. that a property must be proved in somebody at the trial, or it shall be presumed in the prisoner from his plea of not guilty.

Sect. 47. And there is a special case wherein it is said, that a man may commit larceny by the taking of things whereof the absolute property is in himself; as if A. (c) deliver goods to B. being a taylor or carrier, &c. and afterwards, with an intent to make him answer for them, fraudulently and secretly take them away; for B. had a special kind of property in the goods so delivered to him, in respect whereof if a stranger (d) had stolen them, he might have been indicted generally as having stolen B.'s goods, and the injury is altogether as great, and the fraud as base, where they are taken away by the very owner.

(c) 7. H. 6. 43. 5. H. 7. 15. B. Cor. 45, 160. C. Eliz. 536. S. P. C. 26. 3. Inst. 110. Dalt. c. 103. (d) Keilw. 70.

As to THE SIXTH POINT, *viz.* Of what value the goods stolen must be.

Sec. 48. If they be but of the value of twelve pence, or under, the offence can be but petit larceny.

2. Roll. 78. Dalt. c. 101. 2. Inst. 189. Kely. 68. 4. Com. 238.

Sec. 49. Yet if two persons, or more, together, steal goods above the value of twelve pence, every one of them is guilty of grand larceny, for each person is as much an offender as if he had been alone.

S. P. C. 24.
Dalt. c. 101.
Crom. 36.

Sec. 50. Also it seems the current opinion of all the *old books*, that if one at several times steal several parcels of goods, each under the value of twelve pence, but amounting in the whole to more, *from the same person*, and be found guilty thereof *on the same indictment*, he shall have judgment of death as for grand larceny.

S. P. C. 24.
1. Hale 531.
Crom. 36.
Dalt. c. 101.
2. Keb. 719

† *Sec. 51.* But the severity of this rule of law is now obsolete; and it seems to be settled, that the value of the property stolen must not only be, in the whole, of such an amount as the law requires to constitute grand larceny, but that the stealing must be to that amount at one and the same particular time; for things stolen at different times are, in fact, different acts of stealing; and no number of petit larcenies will amount to a grand larceny, nor any number of grand larcenies, where it depends on the value of the property stolen, to a capital offence.

Petrie's Case,
Cases in Cro.
Law 239.
See also 1.
Hale 530.

As to THE SEVENTH POINT, *viz.* Where the offence of larceny may be tried.

Sec. 52. It is certain, that he who steals my goods in the county of *B.* and carries them to the county of *C.* may be indicted or appealed in the county of *C.* as well as that of *B.*; because the possession still continuing in me, every moment's continuance of the trespass is as much a wrong, and may come under the word *cepit* as much as the first taking; yet a pirate carrying the goods whereof he robbed me at sea into any county, cannot be indicted for felony there, because the original taking was not such a felony whereof the common law takes cognizance.

13. Edw. 4. 3.
S. P. C. 61.
182.
B. App. 84.
1. Cor. 71.
1. Hale 507.
3. Inst. 113

† *Sec. 53.* By 13. Geo. 3. c. 31. s. 4. it is recited, "that whereas it frequently happens in both parts of the United Kingdom, that persons having stolen or otherwise feloniously taken away money, cattle, goods, or other effects, carry the same into the other part of the United Kingdom, and there have

Persons who shall have stolen money, &c. in either part of the United Kingdom, may be indicted for theft.

have the said money, cattle, goods, or other effects, in their possession or custody; and doubts have been entertained, whether they could be indicted and tried in that part of the United Kingdom, as the original offence was not there committed;” and enacted, “ That, if any person or persons “ having stolen, or otherwise feloniously taken money, cattle, “ goods, or other effects, in either part of the United King- “ dom, shall afterwards have the same money, cattle, goods, “ or other effects, or any part thereof, in his, her, or their “ possession or custody, in the other part of the United “ Kingdom, it shall and may be lawful to indict, try, and “ punish such person or persons for theft or larceny in “ that part of the United Kingdom where he, she, or they “ shall so have such money, cattle, goods, or other effects, “ in his, her, or their possession or custody, as if the said “ money, cattle, goods, or other effects, had been stolen in “ that part of the United Kingdom.”

Receivers of money, &c. in either part of the kingdom, knowing the same to be stolen, also liable to be punished.

† *Seet. 54.* By 13. Geo. 3. c. 31. s. 5. it is further enacted, “ That if any person or persons, in either part of the “ United Kingdom, shall hereafter receive or have any “ money, cattle, goods, or other effects, stolen, or otherwise “ feloniously taken, in the other part of the United King- “ dom, knowing the same to be stolen, or otherwise felo- “ niously taken, every such person or persons shall be liable “ to be indicted, tried, and punished for such offence in that “ part of the United Kingdom where he, she, or they shall “ so receive or have the said money, cattle, goods, or other “ effects, in the same manner, to all intents and purposes, “ as if the said money, cattle, goods, or other effects, had “ been originally stolen, or otherwise feloniously taken, in “ that part of the United Kingdom.”

As to THE EIGHTH POINT, *viz.* In what cases Simple Grand Larceny is excluded from the benefit of clergy.

SIMPLE GRAND LARCENY is excluded from the benefit of the clergy in the following cases,

- Post. 210. † *Seet. 55.* FIRST, In horsestealing, by 1. Edw. 6. c. 12. 2. and 3. Edw. 6. c. 33. and 31. Eliz. c. 12.
- Post. 211. † *Seet. 56.* SECONDLY, In stealing sheep and other cattle, by 14. Geo. 2. c. 6. and 15. Geo. 2. c. 34.
- Post. 222. † *Seet. 57.* THIRDLY, In stealing woollen goods from tenter-grounds in the night-time, by 22. Car. 2. c. 5.

† *Seet.*

† *Stat.* 58. FOURTHLY, In stealing linen or cotton Post. 223. goods from bleaching or printing grounds, by 18 Geo. 2. c. 2^a.

† *Stat.* 59. FIFTHLY, In stealing to the amount of forty Post. 225. shillings out of any ship, barge, lighter, boat, vessel, or craft, on any navigable river, by 24 Geo. 2. c. 45.

† *Stat.* 60. SIXTHLY, In stealing from ships wrecked Post. 227. or in distress, by 12. Ann. c. 18. or 26. Geo. 2. c. 19.

† *Stat.* 61. SEVENTHLY, In stealing naval stores, by Post. 228. 31. Eliz. c. 4. and 22. Car. 2. c. 5.

† *Stat.* 62. EIGHTHLY, In stealing letters, by 7. Geo. 3. Post. 229. c. 50.

† *Stat.* 63. NINTHLY, In indictments in a foreign Post. 230. county, by 3. and 4. Will. and Mary, c. 1.

† *Stat.* 64. And all these several statutes I shall proceed more fully to consider in the continuations of this Chapter.

CHAPTER THE THIRTY-THIRD

CONTINUED.

OF HORSESTEALING.

† *Stat.* 1. **BY** 1. Edw. 6. c. 12. s. 10. "No person or
 " persons that shall be in due form of law
 " attainted or convicted for felonious stealing of horses,
 " geldings, or mares, shall be admitted to have or enjoy
 " the privilege or benefit of his clergy."

Dyer 99.

2. Hale 364.

Cases C. L. 5.

† *Stat.* 2. But it was doubted whether the Legislature
 intended by this statute to deprive those of clergy who
 stole only one horse, mare, or gelding; and therefore by
 2. and 3. Edw. 6. c. 33. "All and singular person and
 " persons feloniously taking or stealing any horse, gelding,
 " or mare, shall be put from clergy, in like manner and
 " form as though he or they had been indicted or appealed
 " for felonious stealing of two horses, two geldings, or
 " two mares of any other, and thereupon found guilty."

† *Stat.* 3. By 31. Eliz. c. 12. s. 5. it is enacted, "That
 " not only all accessaries before such felony done, but also
 " all accessaries after such felony, shall be deprived and put
 " from all benefit of their clergy, as the principal by statute
 " heretofore made, is, or ought to be."

Foster's

Crown Law,

372, 373.

† *Stat.* 4. It was agreed by all the judges, at a conference
 in Easter Term, in the second of Queen Anne, that this
 statute extends only to such persons as were, in judgment
 of law, accessaries at the time the act was made, namely,
 accessaries at common law; not to such as are made ac-
 cessaries by subsequent statutes: and therefore a person
 knowingly receiving a *stolen horse*, is not ousted of his clergy
 by this statute; but he is punishable as a receiver of stolen
 goods by 3. and 4. Will. and Mary, c. 9.

CHAPTER THE THIRTY-THIRD

CONTINUED.

STEALING SHEEP AND OTHER CATTLE.

† *Sect. 1.* **BY** 14. Geo. 2. c. 6. "If any person or persons shall, at any time, feloniously drive away, or in any other manner feloniously steal one or more sheep, or other cattle, of any other person or persons whatsoever, or shall wilfully kill one or more sheep or other cattle of any other person or persons whatsoever, with a felonious intent to steal the whole carcase or carcasses, or any part or parts of the carcase or carcasses of any one or more sheep or other cattle that shall be so killed, or shall assist or aid any person or persons to commit any such offence or offences; then the person or persons guilty of any such offence shall be adjudged guilty of felony, and shall suffer death as in cases of felony, without benefit of clergy."

† *Sect. 2.* But as all penal statutes must be construed strictly, these general words, "*or other cattle*," were looked upon by the judges as much too loose to create a capital offence, and the act was held to extend to sheep only; and therefore by 15. Geo. 2. c. 34. it is declared, "That the above act was meant and intended, and shall be construed, deemed, and taken to extend to any bull, cow, ox, steer, bullock, heifer, calf, and lamb, as well as sheep, and to no other cattle whatsoever."

† *Sect. 3.* It hath been determined upon this statute, *Cooke's Case*, that the word "heifer" is used in the act in contradistinction to the word "cow;" and therefore an indictment for stealing a cow is not supported by evidence that the animal stolen was a beast of the ox kind, called a *heifer*, never having had a calf. *Cases in Cro. Law. 99.*

CHAPTER THE THIRTY-THIRD

CONTINUED.

O F

LARCENY FROM TENTER GROUNDS.

† *Sect. 1.* BY 22. Car. 2. c. 5. f. 3. “ No person or persons who shall be indicted for felonious cutting and taking, stealing, or carrying away of any cloth or other woollen manufactures from the rack or tenter in the night-time, and be thereupon found guilty, shall be admitted to have the benefit of his or their clergy.”

† *Sect. 2.* But by 22. Car. 2. c. 5. f. 4. it is provided, “ That it shall and may be lawful for the judges or justices of the court before whom such offender shall be arraigned and condemned, at their discretion, to grant a reprieve for the staying of execution of such offender, and to cause such offender to be transported for seven years.”

† *Sect. 3.* And by 22. Car. 2. c. 5. f. 4. it is further enacted, “ That if such offender shall refuse to be so transported, or after such transportation shall return or come again into England, Wales, or Berwick upon Tweed, within the time aforesaid, such person shall be put to execution upon the judgment so given and pronounced against him.”

CHAPTER THE THIRTY-THIRD

CONTINUED.

O F

LARCENY FROM BLEACH GROUNDS.

† *Stat. 1.* **BY** 18. Geo. 2. c. 27. “ All and every person
 “ and persons who shall, by day or night,
 “ feloniously steal any linen, fustian, callicoe, cotton,
 “ cloth, or cloth worked, woven, or made of any cotton
 “ or linen yarn mixed, or any thread, linen, or cotton
 “ yarn, linen or cotton tape, inkle, filleting, laces, or
 “ any other linen, fustian, or cotton goods or wares
 “ whatsoever, laid, placed, or exposed to be printed,
 “ whitened, bowked, bleached, or dried in any whitening
 “ or bleaching croft lands, fields, or grounds, bowking-
 “ house, drying-house, printing-house, or other building,
 “ ground, or place, made use of by any callico-printer,
 “ whitster, crofter, bowker, or bleacher, for printing,
 “ whitening, bowking, bleaching, or drying of the same,
 “ to the value of ten shillings, or who shall aid or assist,
 “ or shall wilfully or maliciously hire or procure any other
 “ person or persons to commit any such offence, or who
 “ shall buy or receive any such goods or wares so stolen,
 “ knowing the same to be stolen as aforesaid, shall suffer
 “ death without benefit of clergy.”

† *Stat. 2.* But by 18. Geo. 2. c. 27. s. 2. it is provided,
 “ That in case the judge or court by and before whom
 “ any such offender or offenders shall be tried and con-
 “ victed, shall think it reasonable, upon the circumstances
 “ of the case, that such offender or offenders, or any of
 “ them, instead of suffering death, should be transported,
 “ it may be lawful to and for such judge and court, instead
 “ of giving judgment of death against such offender or
 “ offenders, as in cases of felony without benefit of clergy,
 “ to order such offender or offenders to be transported for
 “ the space of fourteen years.”

† *Stat.* 3. By 18. Geo. 2. c. 27. s. 3. “ If any such
“ offender or offenders, who shall be so ordered for trans-
“ portation, shall break gaol or escape thereout before such
“ transportation, or shall return into, and be at large
“ within, any part of *Great Britain*, without lawful cause,
“ before the expiration of the said term of fourteen years,
“ all and every such offender or offenders, being thereof
“ lawfully convicted, shall suffer death as felons, and have
“ execution awarded against them, as persons attainted of
“ felony, without benefit of clergy.”

CHAPTER THE THIRTY-THIRD

CONTINUED.

LARCENY UPON NAVIGABLE RIVERS.

† *Stat. 1.* BY 24 Geo. 2. c. 45. "All and every person or persons that shall at any time steal any goods, wares, or merchandize, of the value of forty shillings, in any ship, barge, lighter, boat, or other vessel or craft, upon any navigable river, or in any port of entry or discharge, or in any creek belonging to any navigable river, port of entry or discharge, within the kingdom of Great Britain; or shall feloniously steal any goods, wares, or merchandize, of the value of *forty shillings*, upon any wharf or key adjacent to any navigable river, port of entry, or discharge; or shall be present, aiding, and assisting in the committing any of the offences aforesaid, being thereof convicted or attainted, or being indicted thereof shall of malice stand mute, or will not directly answer to the indictment; or shall peremptorily challenge above the number of twenty persons returned to be of the jury, shall be excluded from the benefit of clergy."

And upon this statute the following determinations have been made.

† *Stat. 2.* It has been ruled on the trial of an indictment on this statute, that *Portugal money* not made current by proclamation, but current by tacit consent, is not "goods, wares, or merchandize," within the meaning of this law. *Grime's Case, Maidstone Lent Assizes 1752. Foster 79.*

† *Stat. 3.* So also where the indictment was for stealing sundry articles of *wearing apparel*, value twenty-one shillings, and two *dollars*, value nine shillings, and two *guineas*, from on board a ship lying in the river *Thames*, it was held, 50. that the *dollars* and the *guineas*, being *money*, were not within the act, and that as the value of the wearing apparel did not amount to forty shillings, the prisoner was not ousted by this statute of the benefit of clergy. *Leigh's Case, Law ad edit.*

† *Stat. 4.* It seems also, that the stealing of *bank notes* from on board a vessel in a navigable river would not be within this statute, because bank notes are not included within *The Case of W. Morris, Cases in Cro Law 308.*

within the meaning of goods and chattels although by the statute 2. Geo. 2. c. 25. s. 3. the stealing of bank notes is made felony "of the same nature, and in the same degree, and with or without the benefit of clergy, in the same manner as it would have been if the offender had stolen, or taken away by robbery, any other goods of like value with the money due on such notes, &c."

Moses Pike's
Case, Old
Bailey May
Session 1784.

† *Seft.* 5. It has also been held, that evidence of a loaded barge in navigating down the *Thames* being likely to sink, and that the bargeman in order to avoid the danger, unloaded part of the cargo into a long boat, and carried both the barge and the boat into *Limehouse Dock*, where the boat with her lading was left aground by the efflux of the tide, and in such situation stolen in the night time from her moorings, will not maintain an indictment, charging the offence to have been committed "on the navigable river *Thames*;" but perhaps it would have been sufficient if the indictment had, in the language of another part of the statute, charged the stealing from a boat "in a certain creek belonging to the navigable river *Thames*."

CHAPTER THE THIRTY-THIRD

CONTINUED.

LARCENY FROM WRECKS.

† *Sec. 1.* **BY** 12. Ann. st. 2. c. 18. f. 5. “ If any person
“ or persons shall steal any pump belonging
“ to any ship or vessel shipwrecked or in distress, or shall
“ be aiding or abetting in the stealing such pump, such
“ person or persons shall be and are hereby made guilty of
“ felony without any benefit of his, her, or their clergy.”

† *Sec. 2.* By 26. Geo. 2. c. 19. f. 1. “ If any person
“ or persons shall plunder, steal, take away or destroy any
“ goods or merchandizes or other effects from or belong-
“ ing to any ship or vessel of his majesty’s subjects, or others,
“ which shall be in distress, or which shall be wrecked,
“ lost, stranded or cast on shore, in any part of his ma-
“ jesty’s dominions (whether any living creature be on
“ board such vessel or not) or any of the furniture, tac-
“ kle, apparel, provisions, or part of such ship or vessel ;
“ then such person or persons so offending shall be deemed
“ guilty of felony, and shall suffer death as in case of felony
“ without benefit of clergy.”

† *Sec. 3.* But by 26. Geo. 2. c. 19. f. 1. it is provided,
“ That when goods or effects of small value shall be stranded,
“ lost, or cast on shore, and shall be stolen without circum-
“ stances of cruelty, outrage, or violence, then and in such
“ cases it shall be lawful for any person or persons to pro-
“ secute for such offence by way of indictment for petit lar-
“ ceny, and the offender, being thereof lawfully convicted,
“ shall suffer such punishment as the law in cases of petit
“ larceny does enjoin or require.”

† *Sec. 4.* But the offence of plundering or destroying
ships wrecked or in distress being more particularly set forth
in treating of *Felonies by Statute*, we shall refer to what is
there said for further information on this subject.

CHAPTER THE THIRTY-THIRD

CONTINUED.

LARCENY OF MILITARY AND NAVAL STORES.

† *Secl.* 1. **BY** 31. Eliz. c. 4. " If any person or persons
" having the charge or custody of any armour,
" ordnance, munition, shot, powder, or habiliments of war
" of the queen's majesty's, her heirs or successors, or of any
" victuals provided for the victualling of any soldiers, gun-
" ners, mariners or pioneers, shall for any lucre or gain,
" or wittingly, advisedly, and of purpose to hinder or im-
" peach her majesty's service, embezzle, purloin, or
" convey away any of the said armour, ordnance, mu-
" nition, shot, or powder, habiliments of war, or victuals,
" to the value of twenty shillings at one or several times ;
" then every such offence shall be judged felony, and the
" offender or offenders therein tried, proceeded on, and
" suffer as in case of felony."

† *Secl.* 2. But by 31. Eliz. c. 4. f. 2. it is provided,
" That none shall be impeached for any offence against
" this statute, unless the same impeachment be prosecuted or
" begun within the year next after the offence done."

† *Secl.* 3. By 31. Eliz. c. 4. f. 2. it is also provided,
" That this act nor any thing therein contained, nor any
" attainder or attainders of any person or persons for any
" offence made felony by this act, shall create any forfeiture
" of tenements or hereditaments any longer than during
" his or their life or lives ; or make any corruption of blood,
" or loss of dower."

† *Secl.* 4. But by 22. Car. 2. c. 5. reciting, that many
persons were the more emboldened to commit the offences
created by 31. Eliz. c. 4. in respect that, in those cases, the
benefit of clergy is allowed by law, IT IS ENACTED, " That
" no person or persons who shall be indicted for any of-
" fence committed against the said statute of 31. Eliz. c. 4.
" or shall feloniously steal or embezzle any of his majesty's
" sails, cordage, or any other his majesty's naval stores, to
" the value of *twenty shillings*, and be thereupon found guilty,
" shall be admitted to have the benefit of his or their
" clergy, but utterly be excluded thereof, &c."

CHAP

CHAPTER THE THIRTY-THIRD

CONTINUED.

LARCENY OF LETTERS.

† *Stat. 1.* **BY** 7. Geo. 3. c. 50. s. 2. "If any person or persons whatever shall steal and take out of any mail or mails, or from or out of any bag or bags of letters sent or conveyed by the post, or from or out of any post-office or house, or place for the receipt or delivery of letters or packets sent or to be sent by the post, any letter or letters, packet or packets, such offender or offenders shall suffer death without clergy." See Post. page 251. as to the offence of robbing mails.

CHAPTER THE THIRTY-THIRD

CONTINUED.

LARCENY IN A FOREIGN COUNTY.

† *Seet. 1.* **BY** 3. & 4. Will. & Mary, c. 1. it is enacted, "That
 " if any person or persons hereafter be indicted
 " offelony in stealing of any goods or chattels in any county
 " within the realin of *England*, dominion of *Wales*, or town
 " of *Berwick upon Tweed*, and thereof be convicted or at-
 " tainted, he or they shall be totally excluded from having
 " the benefit of his or their clergy, if it appear upon evi-
 " dence or examination before the justices that the said
 " goods or chattels were taken by *robbery* or *burglary*, or
 " in *any other manner* in any other county, whereof if such
 " person or persons had been convicted by a jury of the
 " said other county, he or they are excluded by virtue of
 " this or any other act from having the benefit of his or
 " their clergy."

*But see the
 preamble to
 25. Hen. 8. c. 3.
 4. Hawk. P.C.
 ch. 33. l. 80.

Moor 550.
 1. Hale 536.
 2. Hale 349.

† *Seet. 2.* It hath been holden, that if a person who has
 taken goods by *robbery* or *burglary* in one county be indict-
 ed for *larceny* of those goods, and they are found to be of the
 value of ten-pence only, he shall have his clergy in the *foreign*
county; although if he had been indicted of the robbery or
 burglary in the proper county, he would have been excluded
 from clergy.

CHAPTER THE THIRTY-THIRD

CONTINUED.

O F

P E T I T L A R C E N Y.

Seet. 1. **A**ND now we are come to PETIT LARCENY, which seems to agree with grand larceny in all the particulars abovementioned, except only the value of the goods; so that wherever an offence would amount to grand larceny if the thing stolen were above the value of twelve-pence, it is petit larceny if it be but of that value or under.

1. Hale 503.
Foster 73.

Seet. 2. And if one be indicted for stealing goods to the value of ten shillings, and the jury find specially that he is *guilty*, but that the goods are worth but *ten-pence*, he shall not have judgment of death, but only as for petit larceny.

Bro. Cor. 84.
184.
S. P. C. 24.
Dalt. c. 101.
Crompt. 36.
Hetley 66.

† *Seet. 3.* And there are no accessaries in petit larceny; and therefore if two be indicted, one for privately stealing from the person a handkerchief to the value of *twelve-pence*, and the other for receiving it, and the principal be found guilty to the value of *ten-pence* only, the accessary ought to be discharged. So if the principal be charged with grand larceny, and the jury find the value to be only *ten-pence*, the accessary ought to be discharged.

Case of Abraham Evans,
Foster 73.

Seet. 4. It seems, that all petit larceny is *felony*, and consequently requires the word *felonice* in an indictment for it. Yet it is certain, that it is not punished with the loss of life or lands, but only with the forfeiture of goods and chattels, and whipping, or other corporal punishment.

Bro. Cor. 2.
219.
1. Hale 500.
3. Inst. 223.
S. P. C. 24.

† *Seet. 5.* But it is enacted by 4. Geo. 1. c. 11. and 6. Geo. 1. c. 23. "That where any person or persons shall be convicted of grand or petit larceny, &c. who by the law shall be intitled to the benefit of clergy, and liable only to the penalties of burning in the hand or whipping, it shall and may be lawful for the Court before whom they are convicted, or any Court held at the same or any other place with the like authority, if they think

“ fit, to order such offenders to be transported for the space
“ of seven years.”

+ *Stat.* 6. And at the common law, a conviction of petit larceny prevented the party from giving evidence as a witness in any court of justice ; but by the 31. Geo. 3. c. 35. it is enacted, “ That no person shall be an incompetent witness by reason of a conviction for petit larceny.”

CHAPTER THE THIRTY-FOURTH.

OF

R O B B E R Y.

MIXT or complicated larceny is such as hath a farther degree of guilt in it, as being a taking,

1. From *the person* of a man, or

P.in.P.L. 287.

2. From his *house*.

LARCENY from the person of a man either puts him in fear, and then it is called ROBBERY; or does not put him in fear, and then it is called barely, LARCENY *from the person*.

ROBBERY is a felonious and violent taking away from the person of another, goods or money to any value, putting him in fear.

In the explication whereof, I shall consider the following particulars:

3. Inst. 68.

1. Hale 531.

1. What taking away will satisfy the word *cepit* in an indictment for this offence.

2. What shall be said to be a taking away from the person.

3. What kind of taking shall be said to be violent.

4. In what respects robbery differs from other larcenies.

5. In what cases robbery, whether from the person of another or from his house is excluded from the benefit of clergy.

As to THE FIRST POINT, *viz.* What taking away will satisfy the word *cepit* in an indictment for robbery.

Sett. 1. It seems clear, that he who receives my money 44. E. 3. 24,
by my delivery, either whilst I am under the terror of his 4. H. 4. 3.
assault, or afterwards while I think myself bound in con- Dalt. c. 100,
science to give it to him by an oath to that purpose, S. P. C. 27.
which in my fear I was compelled by him to take, may, in 3. Inst. 68.
the F. Cor. 464.

the eye of the law, as properly be said to take it from me, as he who actually takes it out of my pocket with his own hands.

3. Inst. 60.

Sec. 2. Neither can he who has once actually completed the offence, by taking my goods in such a manner into his possession, afterwards purge it by any re-delivery.—

(a) Prin. P. L.
286.

† The outrage offered to the rights of society doth not vary in its nature, because ineffectual in its consequences (a). Therefore where a robber, having taken a purse, returned it again, saying, “If you value your purse, take it and give me the contents;” but was seized before the money was re-delivered; he was found guilty (b); for the continuance of the property in the possession of the robber is not required by law (c).

(b) Peat's Case,
Cases C. L.
200.
(c) 3. Inst. 69.

S. P. C. 27.

Sec. 3. But he who only attacks me in order to rob me, but does not take my goods into his possession, though he go so far as to cut off the girdle of my purse, by reason whereof it falls to the ground, is not guilty of robbery; but highly punishable at the common law by fine and imprisonment, &c. for so enormous a breach of the peace.

Cromp. 34.

Dalt. c. 100.

1. Hale 532.

† *Sec. 4.* This common-law punishment not proving sufficient to deter offenders, it is made felony by 7. Geo. 2. c. 21. “to assault another with an intention to rob him.”

(d) See post.
“Felonies by
Statute.”

(d) And to crush the offence of robbery in its earliest stage, it is enacted by 23. Geo. 3. c. 88. “That whoever shall be apprehended, and any pistol, hanger, cutlafs, bludgeon, or other offensive weapon, shall be found upon him, with intent feloniously to assault any person, he shall be deemed and punished as a rogue and vagabond (e).”

(e) See Vol. 3.
“Vagrants.”

1. Hale 533.

334. 537.

1. Andr. 116.

Murphy's Case,

Chanc. 34.

Dalt. c. 100.

Sec. 5. Yet in some cases a man may be said to rob me, where in truth he never actually had any of my goods in his possession; as where I am robbed by several of one gang, and one of them only takes my money; in which case, in judgment of law, every one of the company shall be said to take it, in respect of that encouragement which they give to another, through the hopes of mutual assistance in their enterprize; Nay, though they miss of the first intended prize, and one of them afterwards ride from the rest, and rob a third person in the same highway without their knowledge, out of their view, and then return to them, all are guilty of robbery, for they came together with an intent to rob, and to assist one another in so doing.

As to THE SECOND POINT, *viz.* What shall be said to be taking away from the person.

Sect. 6. Not only the taking away a horse from a man whereon he is actually riding, or money out of his pocket, but also the taking of any thing from him openly and before his face, which is under his immediate and personal care and protection, may properly enough be said to be a taking from the person: and therefore he who having first assaulted me takes away my horse standing by me, or having put me in fear drives my cattle in my presence out of my pasture, or takes up my purse which in my fright I cast into a bush, or my hat which fell from my head, or robs my servant of my money before my face, may be indicted as having taken such things from my person.

† *Sect. 7.* But the taking must be subsequent to the fear; for fear is the distinguishing ingredient between robbery and other larcenies. Therefore where a thief clandestinely stole a purse, and, on its being discovered in his custody, denounced vengeance against the party if he spoke of it, and then rode away, it was held to be simple larceny only, and not robbery; because the fear excited by the menaces of the thief, was subsequent to the act of taking the purse. So where several men find another apparently intoxicated, and swearing he shall go home, they drag, abuse, kick him, and clandestinely take his money, this is no robbery; for no demand is made of money, nor any fear excited for the purpose of obtaining it.

As to THE THIRD POINT, *viz.* What kind of taking shall be said to be violent.

Sect. 8. Wherever a person assaults another with such circumstances of terror as put him into fear, and cause him by reason of such fear to part with his money, the taking thereof is adjudged robbery, whether there were any weapon drawn or not, or whether the person assaulted delivered his money upon the other's command, or afterwards gave it him upon his ceasing to use force, and begging an alms; for he was put into fear by his assault, and gives him his money to get rid of him.

† *Sect. 9.* But it is not necessary that the fact of actual fear should either be laid in the indictment, or be proved upon the trial, it is sufficient if the offence be charged to be done *violenter et contra voluntatem*. And if it appear upon the evidence to have been attended with those circumstances of violence or terror, which in common experience are likely

S. P. C. 27.
Crom. 34, 35.
Dalt. c. 100.
5. Inst. 69.
1. Hale 533.
Styles 156.
Salk. 613.
Carth. 145.
B. R. H. 107.
Strange 1015.
Douglas 197.
Cumyns 478.

3. Inst. 68.
2. Roll. 154.
1. Hale 533.
Case of Rich.
Moss O. B.
May Session
1784.

1. Hale 533.
534.
Crom. 34.
Dalt. c. 100.

Foster 128.
4. Com. 242.
Donally's
Case, Cases in
Cro. L. 176.

to induce a man to part with his property against his consent, either for the safety of his person, or for the preservation of his character and good name, it will amount to a robbery.

Parkins's
Case, Cases
Cro. L. 238.
O. B. 1784.
p. 71.
Lapier's Case,
Cases C. L.
254.
Gascoign's
Case, Cases
Cro. Law 234.

† *Sec. 10.* Accordingly, to snatch a basket of linen suddenly from the head of another; or to pull an earring from the ear of a lady; or if an officer feloniously take money from a prisoner not to take her to gaol, under colour of authority, &c. without in either case having made any express demand, have been ruled sufficient *acts of violence* to constitute the crime of robbery.

Raym. 297. Dalt. 489. Prin. P. L. 286.

Hickman's
Case, Cases
C. L. 231.
Foster 129.
Prin. P. L. 287.

† *Sec. 11.* And to obtain property by threatening to accuse another of having been guilty of an unnatural crime, has been held, upon the solemn opinion of all the judges to be an act sufficient to raise, in the mind of the party menaced, such a *terror* and apprehension of mischief as to constitute the offence by *putting in fear*; for the law in *odium spoliatoris*, will presume fear where there appears to be so just a ground for it.

Macdaniel's
Case, Foster
123. 128.

† *Sec. 12.* But the taking must be *against the will* of the person robbed; and therefore if *A.* agree to be robbed by *B.* and *A.* places himself in a certain place for that purpose, and *B.* pursuant to the agreement take the goods from him by actual force, yet it is no robbery.

Morden's Case,
Foster 129.

† *Sec. 13.* But if a person, knowing a certain highwayman infests a particular road, go that road, and, in order to detect him, suffer himself to be robbed by him, the property shall be considered as taken not only from his person, but against his will.

Crom. 34, 35.
Dalt. c. 100.

Sec. 14. And some have gone so far as to hold, that if a man meeting another going with his goods to market in order to sell them, compel him to sell them to him against his will, he is guilty of robbery, though he give for them more than they are worth: But perhaps this opinion is too severe, because the grievance to the party seems rather to proceed from the perverseness of his humour, than from any real injury done to him; and there seems to be no such enormity in the intention of the wrong doer as is implied in the notion of felony.

1. Hale 509.

Sec. 15. However it is certain, that the claim of property in the thing taken away, without any colour, is no manner of excuse.

As to THE FOURTH POINT, viz. In what respects robbery differs from other larcenies.

SECT. 16. FIRST, No other larceny shall have judgment of death, unless the thing stolen be above the value of *twelve-pence*; but robbery shall have such judgment, how small soever the value may be of the thing taken away.

S. P. C. 27.
Crom. 33.
Dalt. c. 100.

SECT. 17. SECONDLY, Other larcenies, whether from the person or not, shall not be supposed to be done with violence or terror, but robbery is always laid as done on an assault with violence, and putting the party in fear, (a) which is properly thus expressed in an indictment, *a personu* J. S. *violenter et felonice cepit et asportavit, in magnum prædicti* J. S. *terrorem*.

3. Inst. 68.
Kelynge 70.

(a) Vide ante
Sect. 9.

SECT. 18. THIRDLY, But they all agree in this, that the offenders had the benefit of clergy at the common law.

† As to THE FIFTH POINT, viz. In what cases robbery, whether from the person of another, or from his house is deprived of the benefit of clergy, I shall consider in the several continuations of the chapter, how far it is deprived of clergy in respect to

1. Robbery in or near about the highways.
2. Robbery in a church or chapel.
3. Robbery in a dwelling-house, by breaking the house, the owner being therein and put in fear.
4. Robbery in a dwelling-house, by breaking the house, the family being therein, though not put in fear.
5. Robbery in a booth or tent, the family being therein, though not put in fear.
6. Robbery in a dwelling-house, any person being therein, and put in fear.
7. Robbery in a dwelling house by breaking the same in the day-time, any person being therein.
8. Robbery in a dwelling-house, without breaking the house, any person being therein, and put in fear.
9. Robbery in a dwelling-house, by breaking the house, no person being therein, and stealing to the value of five shillings.
10. Robbery of a mail.
11. Robbery in a foreign county.

CHAPTER THE THIRTY-FOURTH.

CONTINUED.

O F

R O B B E R Y

IN OR NEAR

THE KING'S HIGHWAY.

† *Seet.* 1. **BY** 23. Hen. 8. c. i. it is enacted, " That
 " no person or persons which shall be
 " found guilty for robbing of any person or persons in
 " or near about the highways shall be admitted to the
 " benefit of clergy."

† *Seet.* 2. By 4. & 5. Philip & Mary, c. 4. it is enacted,
 " That all and every person and persons that shall ma-
 " liciously command, hire, or counsel any person or per-
 " sons to commit or do any robbery in or near any
 " highway, shall not have the benefit of clergy."

Moor 16.
 2. Hale 349.
 4. Hawk. ch.
 33. l. 25.

† *Seet.* 3. It is necessary, in order to oust the offender
 of his clergy under these statutes, to aver in the indictment,
 that the offence was committed in *the highway*, or in *the*
king's highway, or *near the king's highway*; for if it be laid
 " in the king's *foot way* leading from *London* to *Iffington*," he
 shall have his clergy.

The case of
 Rich. Stoke-
 man's, O. B.
 May Sessions
 1718, coram
 EYRE Justice
 and MONTAGUE Chief Baron.

† *Seet.* 4. And if the indictment charge the robbery to
 have been committed in *the king's highway*, and it appears on
 evidence to have been committed in a private foot path lead-
 ing across the fields to *Pancras*, or any other place, the of-
 fender shall have his clergy.

Oatley's Case,
 Cases C. L. 47.

† *Seet.* 5. So if an indictment charge the robbery in
 the king's highway, and the evidence prove that it was
 committed in a house, the offender shall have his clergy.

2. Hale 536.
 2. Hale 350.

† *Seet.* 6. But if the offence be committed on the river
Thames, or other public river within the body of a county,
 it may be laid as committed upon *the king's highway*, for the
 public streams are highways, and are called *haut streams le*
Roi.

Seet.

† *Stat.* 7. By 3. Will. & Mary, c. 9. which recites that wicked and ill-disposed persons are encouraged to commit robberies upon men's persons, by the privilege, as the law now is, of demanding the benefit of their clergy, IT IS ENACTED, "That all and every person or persons that shall
" rob any other person, or shall comfort, aid, abet, assist,
" counsel, hire or command any person or persons to com-
" mit any of the said offences, shall not have the benefit
" of his or their clergy."

† *Stat.* 8. And it has been ruled, that where an indictment of robbery consisted of two counts, the first on the 3. Will. & Mary, c. 9. and the other on 23. Hen. 8. c. 1. and it appeared that the robbery was committed in a house which had been long unoccupied, and only taken for the purpose of committing the offence, a conviction thereon ousted the offender of his clergy; for that the 3. Will. and Mary, c. 9. applied to all robberies wherever committed.

Cafe of Dan-
ford & New-
ton, O. B.
Sept. Session
1780.
coram BUL-
LER *Justice.*

† CHAPTER THE THIRTY-FOURTH

CONTINUED.

O F

ROBBERY IN A CHURCH OR CHAPEL.

† *Seft.* 1. **BY** 23. Hen. 8. c. 1. f. 3. "No person or
" persons which shall be found guilty for
" robbing any churches or chapels, or other holy places,
" shall be admitted to the benefit of clergy."

4. Hawk. ch.
33. f. 75.
2. Hale 333.
366.

† *Seft.* 2. It does not appear, that accessories to the crime
of sacrilege are ousted of clergy by any statute; and certainly
clergy was not taken away from sacrilege at common law.

Kely. 59. 69.
but see post.

† *Seft.* 3. It is said, that no sacrilege is within this
branch of the statute that is not accompanied with an actual
breaking of the church, &c.

CHAP-

† CHAPTER THE THIRTY-FOURTH

CONTINUED.

O F

ROBBERY IN A DWELLING-HOUSE

BY BREAKING THE HOUSE,

THE OWNER BEING THEREIN AND PUT IN FEAR.

† *Stat.* 1. **BY** 23. Hen. 8. c. 1. f. 3. “no person or
“persons which shall be found guilty of
“robbing any person or persons in their dwelling-houses or
“dwelling-place, the owner or dweller in the same house,
“his wife, his children, or servants, then being within and
“put in fear and dread by the same, shall be admitted to
“clergy.”

† *Stat.* 2. By 4. & 5. Philip & Mary, c. 4. “Every per-
“son and persons who shall maliciously command, hire, or
“counsel any person or persons to do any robbery in any
“dwelling-house or houses, shall not have the benefit of
“clergy.”

† CHAPTER THE THIRTY-FOUR CONTINUED.

O F

ROBBERY IN A DWELLING-HOUSE BY BREAKING THE HOUSE,

THE FAMILY BEING THEREIN THOUGH NOT PUT IN FEAR.

† *Sec.* 1. **BY** 5. & 6. Edw. 6. c. 9. “ If any person or
“ persons shall be found guilty for robbing
“ of any person or persons in any part or parcel of their
“ dwelling-houses or dwelling-places, the owner or dweller
“ in the same house, or his wife, his children, or servants, be-
“ ing then within the same house or place where the robbery
“ and felony is committed and done, or in any other place
“ within the precinct of the same house or dwelling-place, the
“ offender shall in no wise be admitted to clergy, whether the
“ owner or dweller in the same house, his wife or children,
“ then and there being shall be sleeping or waking.”

2. Hale 354.
Foster 108.
Cases Cro. L.
354.

† *Sec.* 2. It is said, that in order to oust the offender of
clergy under this statute, there must be such an actual breaking
of the house as would make a burglary if committed in the
night.

2. Hale 354.

† *Sec.* 3. It is also said, that the indictment must run,
“ broke and entered the mansion-house of J. S. the aforesaid
“ J. S. his wife and children in the same house being, &c.” ;
but that it need not state the robbery *violenter et à personâ*,
but only *è domo prædicta*.

2. Hale 354.

† *Sec.* 4. It is also said, that if a servant steal goods
out of his master's house in the day or night, the master,
his wife and children, being in the house, the offender is not
ousted of his clergy by this statute, because there was no
breaking of the house.

† *Sec.* 5. It is settled, that if a servant unlatch or turn
the key of a door in the house and steal goods out of that
room, he shall not be ousted of his clergy, as a stranger in
such case would be, for the opening of the door in this
manner is within his trust, and so no breaking of the house ;
but if a servant break open a door, whether outward or in-
ward, and steal goods, it is within the act.

† *Sec.*

† *Sec. 6.* It is certain also, that there must not only be a breaking of the house, the owner, his wife, children, or servants, being within the same, but there must also be a felonious taking of goods out of the house, to exclude clergy by this statute. *

† *Sec. 7.* And a bare felonious taking of goods out of the house, whether by night or day, without such a breaking as would make burglary if done in the night, will not oust the offender of clergy. 2. Hale 355.

† *Sec. 8.* It is also said, that a stranger only being in the house at the time is not sufficient, for the statute requires that “the dweller or owner, his wife, children, servants or servant, be within;” and therefore in such case if such sojourner be robbed without being put in fear, the offender shall have his clergy. Staundf. 129.
2. Hale 355.
4. Hawk. P.C. ch. 33. s. 93.
Tomlin’s Case, H. L. 64.
But see post.

† *Sec. 9.* It is said, that if a person go into a house, the doors being open, and break up only a chest or trunk and steal goods, it is not such a robbery as is within this statute; but that in such case if the person break open an inner door, or a counter, or cupboard fixed to the freehold, he shall be ousted of his clergy; and yet it hath been adjudged, that the breaking open of a chest is all one as to this purpose with the breaking open of a door, though the chest be not fixed to the freehold; and this latter resolution was by all the judges of England: but *Mr. Justice Fesler* says, that “if a moveable chest be meant, this case cannot be law;” and that “in capital cases, such fixtures which merely supply the place of chests and other ordinary utensils of household, should be considered in no other light than as mere moveables, partaking of the nature of those utensils, and adapted to the same use.” 1. Hale 524.
1. Hale 508
524.
1. Hale 527.
Foster 108

† *Sec. 10.* But now the benefit of clergy is taken away from robbery in general by 3. & 4. Will. & Mary, c. 9. which enacts, “That all and every person or persons that shall rob any other person, or shall comfort, aid, abet, assist, counsel, hire or command any person or persons to commit such offence, shall not have the benefit of clergy.”

† CHAPTER THE THIRTY-FOURTH

CONTINUED.

O F

ROBBERY IN A BOOTH OR TENT,
 THE FAMILY BEING THEREIN,
 THOUGH NOT PUT IN FEAR.

† *Sec.* 1. **BY** 5. & 6. Edw. 6. c. 9. f. 5. "No person or
 " persons which shall be found guilty of and
 " for robbing any person or persons in any booth or tent, in
 " any fair or market, the owner, his wife, his children, or
 " servants or servant, then being within the same booth or
 " tent, shall be admitted to clergy, but shall be excluded
 " therefrom, and suffer death in such manner and form as
 " is mentioned in 23. Hen. 8. c. 1. for robberies in dwell-
 " ling-houses, the owner or dweller in the same, his wife,
 " children, or servants, being then within the same, and put
 " in fear and dread, without having any respect or considera-
 " tion whether the owner or dweller in such booths or
 " tents, his wife, children, or servants, being in the same
 " booths or tents at the time of such robberies and felonies
 " committed, shall be sleeping or waking."

1. Hale 524. † *Sec.* 2. It hath been ruled, that the robbing of a shop,
 such as was formerly kept in *Westminster-Hall*, and like
 those which are now kept in *Exeter-Change*, is not robbing
 a booth or tent within the meaning of this statute.

CHAP-

† CHAPTER THE THIRTY-FOUR

CONTINUED.

OF

ROBBERY IN A DWELLING-HOUSE

BY BREAKING THE HOUSE,

ANY PERSON BEING THEREIN AND PUT IN FEAR.

† *Sec.* 1. **BY** 1. Edw. 6. c. 12. s. 10. " No person or
" persons that hath been attainted or con-
" victed of breaking any house by day or by night, any person
" being then in the same house where the same breaking
" was committed, and thereby put in fear or dread, shall be
" admitted to clergy."

† *Sec.* 2. It is said, that in order to oust an offender of ^{2.} Hale 353.
clergy under this statute, there must not only in all cases be a
putting in fear, but that the breaking, if by night, must appear
to have been done with intention to commit a felony, and if
by day, that a felony was actually committed.

† *Sec.* 3. It is also said, that if any stranger be then in ^{2.} Hale 353.
the house and put in fear, it excludes from clergy, though
it be not the owner or any of his family.

† CHAPTER THE THIRTY-FOURTH

CONTINUED.

O F

ROBBERY IN A DWELLING-HOUSE

BY BREAKING THE SAME

IN THE DAY-TIME,

ANY PERSON BEING THEREIN.

† *Stat. 1.* BY 3. Will. & Mary, c. 9. “ All and every
 “ person or persons that shall rob any dwelling-house in the day-time, any person being therein, or
 “ shall comfort, aid, abet, assist, counsel, hire, or command
 “ any person or persons to commit the said offence, shall
 “ not have the benefit of his or their clergy.”

CHAP-

† CHAPTER THE THIRTY-FOUR

CONTINUED.

O F

ROBBERY IN A DWELLING-HOUSE

WITHOUT BREAKING,

ANY PERSON BEING THEREIN AND PUT IN FEAR.

† *Stat. 1.* **B**Y 3. Will. & Mary, c. 9. “ All and every per-
 “ son or persons who shall feloniously take
 “ away any goods or chattels being in any dwelling-house,
 “ the owner or any other person being therein, and put in
 “ fear, or shall comfort, aid, abet, assist, counsel, hire or
 “ command any person or persons to commit the said of-
 “ fence, shall not have the benefit of his or their clergy.”

† CHAPTER THE THIRTY-FOURTH

CONTINUED.

O F

ROBBERY IN A DWELLING-HOUSE

BY BREAKING THE HOUSE,

NO PERSON BEING THEREIN,

AND

STEALING TO THE VALUE OF FIVE SHILLINGS.

† *Stat. 1.* **BY** 39. Eliz. c. 15. "If any person or persons shall be found guilty for the felonious taking away
 " in the day-time of any money, goods, or chattels, being of
 " the value of *five shillings*, or upwards, in any dwelling-house
 " or houses, or any part thereof, or any out-house or out-
 " houses, belonging and used to and with any dwelling-
 " house or houses although no person shall be in the said
 " house or out-house at the time of such felony com-
 " mitted, then such person or persons shall not be admitted
 " to clergy."

† *Stat. 2.* It is adjudged, that accessaries to this offence are not excluded from clergy by this statute. But
 (Cro. Car. 473. by 3. and 4. Will. and Mary, c. 9. it is enacted, "That who-
 See 4. Hawk. P. C. ch. 33. ever shall comfort, aid, abet, assist, counsel, hire, or com-
 1. 100 and 101. mand any person or persons to break any dwelling-
 " house, shop, or warehouse, thereunto belonging, or there-
 " with used in the day-time, and feloniously take away any
 " money, goods, or chattels, of the value of *five shillings*,
 " or upwards, therein being, although no person shall be
 " within such dwelling-house, shop, or warehouse, shall be
 " excluded from clergy."

And upon these statutes the following determinations have been made.

† *Stat. 3.* **FIRST,** That the bare taking of goods out of a house, under this statute, will not oust the offender of his
 a. Hale 356. clergy,

clergy, unless there is also such an actual breaking of the house as is necessary to constitute the crime of burglary; and therefore if he enters, the doors being open, and breaks open a chest, and steals goods to the value of five shillings, this shall not oust him of his clergy.

† *Seft. 4.* SECONDLY, But if a man enters a house in ^{2. Hale 357.} the day-time, the doors being open, and no person being in the house, and then breaks open, or unlocks, or unlatches an inner door, and steals goods to the value of five shillings, he thereby loses the benefit of clergy, although he only removes the goods from the place where he takes them, and lays them on the floor; for this is a sufficient asportation to constitute a larceny at common law, and the statute doth not alter the nature of the offence.

† *Seft. 5.* THIRDLY, That to oust the offender of clergy, ^{Poulter's Case, 11. Co. 36. 2. Hale 356.} the indictment must pursue the statute, *viz.* "That in the day-time, to wit, between the hour, &c. the mansion-house of J. S. broke and entered, no person in the same house then being, and there, &c. in the same house found, then and there feloniously stole, took, and carried away, &c." for breaking the house in the day without taking the goods, is no felony.

† *Seft. 6.* FOURTHLY, That if it appear on the evidence ^{2. Hale 356.} that it was in the night, or that any person was in the house at the time, or that he stole the goods, but did not break the house, the offender shall not be ousted of his clergy.

† *Seft. 7.* FIFTHLY, But it hath been adjudged, that if on ^{Smith's Case, Old Bailey, O&S. Seff. 1698. upon a reference to the twelve judges.} an indictment on this statute, it appear that the prisoner was let into the house by a servant, and that he afterwards broke open an inner door, it cannot be objected, that the servant was in the house at the time, for that a house with so treacherous a servant in it was equally defenceless as if no person whatever had actually been therein.

† *Seft. 8.* SIXTHLY, It is also decided, that a chamber in an *inn of court* (a) is a mansion-house within this statute (a) ^{2. Hale 358.} But a lodging in *Whitehall* (b) or *Somerſet-house*, (c) or the ^{(c) Sir H. Hungate's Case, Cro. Car. 473.} *Invalid Office* at *Chelsea* (d), is not a dwelling house within this statute; and therefore a robbery in such lodging is not excluded from clergy by this statute, if any person were at the time in any other part of the palace. ^{(c) Burgess's Case, Kely. 27. 52. (d) Peyton's Case, Cases Cro. Law 267.}

Rex v. Har-
ding. Old
Bailey, Jan.
Sess. 1699.

+ *Sect. 9.* SEVENTHLY, So it hath been ruled, that if the prisoner enter at the outer door, being open, and break open the door of a room above stairs, and steal goods, yet if there is any person in the room below, it is not a case within the statute.

+ *Sect. 10.* EIGHTHLY, It seems, that as the 39. Eliz. c. 15. only takes clergy from the principal where "an out-house in which such robbery is committed" belongs to, or is used with the dwelling house, and the 3. Will. and Mary, c. 9. only deprives aiders of clergy where the robbery is committed in "a shop or warehouse belonging to the dwelling-house," that accessaries before the fact, and persons aiding a robbery in an outhouse which is not either a shop or warehouse belonging to the dwelling-house, would still be entitled to his clergy.

+ *Sect. 11.* And now the benefit of clergy is taken away from robbery generally by 3. and 4. Will. and Mary, c. 9. which enacts, "That all and every person or persons that shall rob any other person, or shall comfort, aid, abet, assist, counsel, hire, or command any person or persons to commit such offence, shall not have the benefit of clergy."

Dapford and
Newson's
Case, C. B.
Sept. Session,
1780.

+ *Sect. 12.* And it has been held, that this statute excludes robbers from the benefit of clergy, in what place soever the offence was committed.

† CHAPTER THE THIRTY-FOURTH

CONTINUED.

OF

ROBBING MAILS.

† *Sec. 1.* **BY** 5. Geo. 3. c. 25. f. 18. & 7. Geo 3. c. 50. f. 2. it is enacted, "That if any person or persons whatsoever shall rob the mail, &c. shall suffer death.

" ever shall rob any mail or mails, in which letters are sent or conveyed by the post, of any letter or letters, packet or packets, bag or mail of letters; or shall steal and take from or out of any such mail or mails, or from or out of any bag or bags of letters, sent or conveyed by the post, or from or out of any post-office, or house or place for the receipt or delivery of letters or packets sent or to be sent by the post, any letter or letters, packet or packets; although such robbery, stealing, or taking, shall not appear, or be proved, to be a taking from the person, or upon the king's highway, or to be a robbery committed in any dwelling house, or any coach house, stable barn, or any out-house belonging to a dwelling-house; and although it should not appear that any person or persons were put in fear by such robbery, stealing, or taking; yet such offender or offenders, being thereof convicted as aforesaid, shall nevertheless respectively be deemed guilty of felony, and shall suffer death as a felon, without benefit of clergy."

CHAP-

† CHAPTER THE THIRTY-FOURTH

CONTINUED.

O F

ROBBERY IN A FOREIGN COUNTY.

† *Seft.* 1. **BY** 3. Will. & Mary, c. 9. f. 3. "If any person or
 " persons be indicted of felony for stealing of any
 " goods or chattels in *England, Wales, or Berwick upon Tweed,*
 " and thereof be convicted or attainted, he or they shall be
 " totally excluded from having the benefit of his or their
 " clergy, if it appear upon evidence or examination before
 " the justices, that the said goods or chattels were taken by
 " robbery or burglary, or in any other manner, in any other
 " county, whereof if such person or persons had been con-
 " victed by a jury of the said other county, he or they are
 " excluded, by virtue of this or any other act, from having
 " the benefit of his or their clergy."

Moor 550.

† *Seft.* 2. But to exclude a robber from clergy under
 this statute, the indictment in the *foreign county* must be for
 a clergyable offence; and therefore, if goods taken in one
 county be carried into another, and the offender there indicted
 for stealing the goods to the value of *ten-pence*, he shall not
 have judgment of death, although if he had been indicted
 in the proper county for the robbery, he would have been
 deprived of clergy, notwithstanding the goods were only of
 ten-pence value.

CHAPTER THE THIRTY-FIFTH.

O F

LARCENY FROM THE PERSON.

LARCENY from the person of a man without putting him in fear, is done either,

1. Openly and avowedly before his face ; or,
2. Privily, without his knowledge.

Sec. 1. **FIRST**, Openly and avowedly before his face; Dyer 224.
as if one take off my hat from my head, and run away with 2. Roll. 154
it, or come into my shop and cheapen goods, and run away Rayn. 275.
with them without paying for them, which is agreed not to Crompt. 34.
be robbery; and, as it seems, is more properly indictable as Dalt. c. 100.
a trespass than felony, unless the offender were either un-
known, or immediately fled the country if he were known;
otherwise I have a remedy against him in the ordinary course
of civil justice, and it seems rigorous to make such offences
capital which probably may be sufficiently provided against
by more gentle methods (1). However, it is certain that all
open larcenies from the person are within the benefit of
clergy, except such as are committed in a dwelling-house, &c.
to the value of 40s.

(1) The case in *Dyer* 224. was an indictment, *quod vi et armis apud B. in via regia ibidem 40s. in pecuniis numerat. &c.* and the judgment was, that it is not robbery if the person is not put in fear *as by assault and violence*. The case in *Roll's Reports* is where the fear was excited subsequent to the taking, and therefore only larceny. The case in *Raymond*, of running away with goods, after having obtained the delivery, upon pretence of purchasing them, is expressly decided to be felony. And *Dalton* from *Crompton* only says, the tortious taking of another's goods without a title so to do, is but a trespass. These references therefore by no means prove that the offences mentioned are not felonies, if committed with a felonious intent.—Vide *Hale's Summary*, 73, 74, 75. *Kely*. 43. 70. 1. *Sid.* 254.

† As to THE SECOND POINT, viz. Of privately stealing from the person.

† *Sec. 2.* By 8. Eliz. c. 4. it is enacted, "That no person or persons which shall happen to be indicted or appealed for felonious taking of any money, goods, or chattels, from the person of any other, privily, without his knowledge, in any place whatsoever, and thereupon found guilty by verdict of twelve men, or shall confess the same upon his or their arraignment, or will not directly answer to the same according to the laws of this realm, or shall stand wilfully, or of malice or obstinately mute, or challenge peremptorily above the number of twenty, or shall be upon such indictment or appeal outlawed, shall from thenceforth be admitted to have the benefit of his or their clergy, but utterly be excluded thereof, and shall suffer death in such manner and form as they should if they were no clerks."

1. Hale 329.

† *Sec. 3.* It is certain, that a private larceny from the person shall have the benefit of clergy, unless it be laid in the indictment as done *clam et secretè*, &c. in exact pursuance of the words of 8. Eliz. c. 4.

Dalt. c. 100.

2. Hale 366.

Foster C. L.

73.

† *Sec. 4.* And it is also settled, that no such larceny shall have judgment of death, but only as of petit larceny, if the jury find the offender guilty under the value of *twelve-pence*; for the statute does not alter the nature of the offence, or make that capital which was not so before, but only leaves the offender to the judgment of the common law.

† *Sec. 5.* So also it seems, from the words of the preamble of the above statute, that it was intended to suppress a certain species of dexterity, against the success of which the common vigilance of mankind was found not to be an adequate safe-guard and protection, and therefore if the larceny is in the slightest degree discovered at the time it is committing, the offender is not within the penalty of the act.

Gribble's
Case, Cases
in Cro. Law
207.

† *Sec. 6.* Also the words of the enacting clause, "privily, without his knowledge," seem to imply, that the mind of the party robbed should be capable of knowledge at the time the offence is committed; and it hath accordingly been ruled, that where the property is taken from a person so intoxicated by liquor as to be altogether senseless of the transaction, the offender shall have his clergy, for that it would be highly unreasonable in so penal a case to permit the faulty drunkenness of a prosecutor to deprive a prisoner of

of any advantage which might have resulted to him from the sobriety of his accuser. But if the intoxication should appear to have been provoked by the instigation of the offender, the law certainly would not permit him to derive any advantage from his own wrong.

† *Sett.* 7. It was formerly held (*a*), that privately stealing from the person of a man while he was asleep was not within this statute so as to deprive the offender of his clergy; as where a person who had become intoxicated at Vauxhall Gardens fell fast asleep, in his way home, in one of the niches on *Westminster-bridge*, and was robbed of his shoe-buckles by one of the waiters who had followed him from the gardens (*b*). So also, where the prosecutor had been drinking at a public-house with the prisoner, and being both of them much intoxicated, they went together to the prisoner's lodgings, where the prosecutor fell asleep, and the prisoner robbed him (*c*). So also, where a hackney-coachman, while waiting for his fare at the door of a brothel in *Covent Garden*, had laid himself down in the bottom of his coach, with the door open, and fallen asleep, and was robbed without perceiving it (*d*). But there seems to be a distinction in the cases upon this subject; for where the prosecutor, a master of a ship then lying in the river *Tyne*, was robbed, while he was asleep, privately and without his knowledge, it was held to be within the statute (*e*). So also, where a waggoner was sleeping on a truif of straw, in the stable of an inn-yard, while his horses were feeding, and was robbed privily while sleeping, the offender was debarred of the benefit of clergy (*f*).

(*a*) *Cases* Cro. Law 393. See also *Furnace's Case*, O. B. July 3d. 1792.

† *Sett.* 8. It is also held, that this statute does not extend to aiders and abettors (*g*), nor to accessaries before or after (*h*): therefore where a person was indicted for privately stealing a badge, called a *George*, from the person of his grace the *Duke of Beaufort*, and it appeared in evidence, that another person was present with the prisoner, aiding in the robbery, and that he was most probably the person who had taken it, the prisoner was acquitted of the capital part of the charge, although the property stolen was found in his possession (*i*). So also, where two persons were indicted on this statute, and it was uncertain which of them had taken the property, both were acquitted of the capital part of the charge (*k*).

(*g*) *William's Case*, *Cases* Cro. Law 393. See also *Furnace's Case*, O. B. July 3d. 1792.

† *Sett.*

(a) Lucas' and Divers' Case, O. B. O&A.-Sess. 1786, before EYRE, Chief Baron.

† Sect. 9. So also it is said, that if the goods be *privately stolen* in one county, and the offender be taken and indicted for *privately stealing* in another county, he shall have the benefit of his clergy (a) ; for in such case it is clear that the offender could not be guilty of privately stealing in the county in which the offence is charged to have been committed ; for although the 3. Will. and Mary, c. 9. s. 3. enacts, " That if any person be indicted of felony for stealing of any goods or chattels in any county in *England, Wales, or Berwick*, and be thereof convicted, &c. he shall be excluded from clergy, if it appear upon evidence that the said goods or chattels were taken by robbery or burglary, or in any other manner, in any other county whereof, if such person had been indicted in the said other county, he is excluded from clergy," yet in the construction of so penal an act, the private stealing cannot be construed to extend to a county in which the property was not taken from the person of the prosecutor, but was only found in the custody of the prisoner.

Sarah Coles' Case, at Chelmsford Lent Assizes, 1787, coram GOUDB, Justice.

† Sect. 10. It has also been held, that an indictment on this statute, charging that the prisoner " one canvas bag, containing seven guineas of the current money of the realm, of the goods and chattels of one *A. B. &c.*" omitting to state *the value* of the property stolen, is bad.

CHAPTER THE THIRTY-SIXTH.

O F

LARCENY FROM THE HOUSE.

THE other branch of complicated larceny is that which is from the habitation of a man.

† *SecT. 1.* This branch, though it seems to have a higher degree of guilt than *simple larceny*, yet I do not find it distinguished from it by the *common law*, either as to the circumstances before mentioned, which are requisite to constitute the offence, or as to the punishment.

† *SecT. 2.* It is however excluded from the benefit of clergy in the following cases, by act of parliament, which I shall particularly consider in the continuations of this chapter:

1. In larceny from a church or chapel.
2. In larceny from a shop or warehouse, to the amount of five shillings.
3. In larceny in a dwelling-house, to the amount of forty shillings.

CHAPTER THE THIRTY-SIXTH

CONTINUED.

LARCENY FROM CHURCH OR CHAPEL.

Vide ante,
page 240.

† *Sec.* 1. **BY** 1. Edw. 6. c. 12. f. 10. "No person or
" persons that shall be attainted or convicted
" of felonious taking of any goods out of any parish church,
" or other church or chapel, shall be admitted to have or
" enjoy the privilege or benefit of his clergy or sanctuary,
" but shall be put from the same."

2. Hale 333. † *Sec.* 2. It is said, that the crime of sacrilege was not
26. Affize 27. deprived of the benefit of clergy by the common law; at
8. P. C. 123. least it was allowed after the statute *de Clero*, 25. Edw. 3. c. 4.
unless the ordinary refused the offender.

2. Hale 366. † *Sec.* 3. It seems to be also agreed, that the statute
4. and 5. Philip and Mary, c. 4. which takes away clergy
from robbing of any *dwelling-house*, doth not extend to
robbing of churches or chapels.

1. Hale 518. † *Sec.* 4. But it is certain, that the above statute of
1. Edw. 6. c. 12. ousts sacrilege of clergy in all cases except
that of challenging above twenty, which defect is supplied
by the statute 3. and 4. Will. and Mary, c. 9.

CHAPTER THE THIRTY-SIXTH

CONTINUED.

LARCENY FROM A SHOP OR WAREHOUSE

PRIVATELY

TO THE AMOUNT OF FIVE SHILLINGS.

† *Sec. 1.* **BY** 10. and 11. Will. 3. c. 23. it is enacted,
 “ That all and every person or persons that
 “ shall, at any time and times, by night, or in the day-
 “ time, in any shop, warehouse, coach-house, or stable,
 “ privately and feloniously steal any goods, wares, or mer-
 “ chandize, being of the value of *five shillings*, or more,
 “ (although such shop, warehouse, coach-house, or stable,
 “ be not actually broke open by such offender or offenders,
 “ and although the owners of such goods, or any other
 “ person or persons, be or be not in such shop, warehouse,
 “ coach-house, or stable, to be put in fear), or shall assist,
 “ hire, or command any person or persons to commit such
 “ offence, shall be absolutely debarred and excluded of and
 “ from the benefit of clergy.”

In the construction of this statute, the following particulars seem most remarkable.

† *Sec. 2.* It seems, that it is not necessary, to constitute the offence of *privately stealing* described by this act, that the shop, warehouse, coach-house, or stable, from which the goods are stolen, should be adjoining or belonging to and used with any dwelling-house; and therefore if goods be stolen from a shop or warehouse, but not privately, the offender cannot be ousted of his clergy, unless the indictment alledge that such shop or warehouse is adjoining to a dwelling-house, pursuant to the statute 3. and 4. Will. and Mary, c. 9.

Jonathan
Wild's Cafe,
Old Bailey,
May Sess.
1725.

† *SecT. 3.* It has been held, that an accessary before the fact, that is, a person who is not in the shop, warehouse, coach-house, or stable, at the time the goods are stolen, but who waits at a distance to receive the goods, is not within this statute, and yet the words are, that whoever shall "assist, hire, or command another to commit this "offence, shall be deprived of clergy."

Cafe of Ann
Sheldon and
Mary Wil-
liams, Old
Bailey, June
Sess. 1785.

† *SecT. 4.* It is certain, however, that if two or more persons be together in the shop, warehouse, coach-house, or stable, at the time the goods are privately stolen, aiding and assisting each other to commit the felony, they are all equally guilty.

Mill's Cafe,
Cafes Cro.
Law 43.
1. Peer Wms.
267.
2. Peer Wms.
112.

† *SecT. 5.* It is settled, that the stealing of money privately from a shop, warehouse, coach-house, or stable, is not within the statute, for the words are, "goods, wares, "and merchandizes;" and it has been decided in a variety of cases, that these words do not include money, either in *specie* or in bank notes.

Cartwright's
Cafe, O. B.
1726. *coram*
RAYMOND,
Chief Justice.
Williams's
Cafe, Croy-
don Sum.
Assize, 1785,
coram EYRE,

† *SecT. 6.* It has also been decided, that if it appear on evidence, that the offender broke open the shop, warehouse, coach-house, or stable, from which the goods are charged to have been privately stolen, he shall not be ousted of his clergy; for where any degree of force is used to obtain the goods, it excludes the idea of privately stealing.

Chief Baron. Foster's Crown Law 79.

Charlotte
Smith's Cafe,
Old Bailey,
Jan. Session,
1784. *coram*
HEATH,
Justice.

Rex v. Hugh
Graham,
Feb. Sess.
1785, *coram*
GOULD, *Justice.*
PERRY, *Baron*, and
BULLER, *Justice.*

† *SecT. 7.* It is also the common practice of the Court, on the trial of an indictment for this offence, to allow the prisoner the benefit of his clergy, if it appear that he was seen, by the prosecutor, his servants, or agents, to take the goods mentioned in the indictment; and the slightest perception of the fact seems sufficient: even a suspicion that the prisoner was about to take the goods, has been held enough, for if the taking is in any degree visible, it cannot be privately stealing.

By FOSTER,
Justice.
Fast. C.L. 78.

† *SecT. 8.* It is said, that the goods, wares, and merchandizes must be such as are usually exposed to sale in the shop or warehouse, and not any other valuable thing which may happen to be put there; and though coach-houses and stables are not places for sale, yet the goods should be such as are usually lodged in those places.

Sess.

† *Seft.* 9. Accordingly it hath been ruled, that a John How-
common warehouse by the water-side, where merchants ^{ard's Case,}
usually lodge goods intended for exportation, until they ^{Foster C. L.}
shall have an opportunity of putting them on board a ^{77.}
ship, is not within the meaning of this statute; for
that by the word "*warehouses*" in the statute is meant
not mere *repositories* for goods, but such places where
merchants and other traders keep their goods for sale,
in the nature of shops, and whither customers go to view
them.

† *Seft.* 10. And it has been doubted, whether the ware- ^{Godfrey's}
house of a *Blackwell-hall-factor*, who receives his goods by ^{Case, Old}
the bale from the manufacturing clothiers in the country, ^{Bailey, Dec.}
and deposits each piece, tied up in brown paper, as taken ^{Seft. 1783.}
out of the bale, upon shelves, but never exposes them to ^{Cases C. L. 235.}
sale in the warehouse windows, or at the door, which is ge-
nerally shut and fastened by a latch, and only sells wholesale
by the piece thus tied up, upon commission, both for expor-
tation and home consumption, is a warehouse within the
meaning of the act.

† *Seft.* 11. Also it has been ruled, that if a watch- ^{Stone's Case,}
maker receive the watch of a customer to repair, and hang ^{Old Bailey,}
it in his show-glass until it is fetched away by the owner, ^{July Seft.}
his shop is not, as to watches so situated, a *shop* within the ^{1784.}
meaning of the statute, but a mere *repository*, where the ^{Cases Cro,}
watch was kept for the owner, and not exposed to sale by ^{Law 274.}
the watch-maker.

† *Seft.* 12. So also, where a shirt was left by a cus- ^{Anonymous,}
tomer at the shop of a tradesman, in order that the master of ^{Old Bailey,}
the shop might send it to a sempstress to be mended, but was ^{April Seft.}
privately stolen before it was sent, it was held, that this ^{9. Geo. 1.}
was not a case within the statute, which was made to ^{8. Mod. 169.}
preserve such goods as are usually in the shop by way of
trade, and not such as are casually left there.

† *Seft.* 13. So also, where a coachman's box-coat was ^{Case of John}
hung up in the stables, and was, privately stolen while the ^{Seas, Old}
coachman went into the house to receive his wages, it ^{Bailey, Feb.}
was held, that this was not a case within the statute, for ^{Seft. 1785.}
that a coachman's livery great-coat is not the usual fur-
niture of stables, and the statute only extends to such ar-
ticles as are proper to be kept therein, such as bridles,
saddles, horse-cloths, &c.

John Archer's + *Sec. 14.* So also it has been held, that the property
 Case, Old must be taken *in* a shop, warehouse, coach-house, or stable ;
 Bailey, May for where a chariot stood under a gateway which was used
 Session, 1784, as a shed, in the yard belonging to a coach-house, and the
coram MR. glasse of the chariot, thus standing, were privately stolen,
 SERJEANT it was held not within the statute.
 ADAIR, *Re-*
corder.

CHAPTER THE THIRTY-SIXTH

CONTINUED.

OF

LARCENY FROM THE DWELLING-HOUSE

TO THE AMOUNT OF FORTY SHILLINGS.

† *Stat. 1.* **BY** 12. Ann. st. 1. c. 7. it is enacted, "That
 " all and every person or persons that shall
 " feloniously steal any money, goods or chattels, wares or
 " merchandizes, of the value of *forty shillings*, or more,
 " being in any dwelling-house or out-house thereunto be-
 " longing, although such house or out-house be not actually
 " broken by such offender, and although the owner of such
 " goods, or any other person or persons, be or be not in
 " such house or out-house, or shall assist or aid any person
 " or persons to commit any such offence, shall be abso-
 " lutely debarred of and from the benefit of clergy."

† *Stat. 2.* But by 12. Ann. c. 7. s. 2. it is provided,
 " That nothing in this act shall extend to *apprentices* under
 " the age of fifteen years who shall rob their masters as
 " aforesaid."

Upon this statute the following decisions have been made.

† *Stat. 3.* That if a person be indicted for robbery in the house, or burglary and stealing of goods, and the evidence should prove a larceny committed to the amount of forty shillings, he may be acquitted of the robbery and burglary, and found guilty on this statute, of stealing in the dwelling-house to the amount of forty shillings, although there is no special count on the statute in the indictment; but it must appear that the larceny was to this amount at one and the same time,

Overand's Case, Cases Cro. Law 83.
 Petrie's Case, Cases Cro. Law 239.

Thompson's
Case, Cases
C. L. 277.

Case of Ann
Gould, O. B.
Jan. Sess.
1780.

James Camp-
bell's Case,
O. B. Jan.
Sess. 1792.
coram EYRE,
Chief Baron.

Major Rey-
nell's Case,
Old Bailey,
January
sessions, 1792.

The case of
Edward
Owen, O. B.
July Sess.
1792, on a
case reserved
by BULLER,
Justice.

Dunmow's
Case, Essex
Lent Assizes,
1793, *coram*
HOTHAM,
Baron.

(a) Morris's
Case, Cases
C. L. 368.

† *Sect. 4.* It has been held, that this statute does not deprive a person of clergy for stealing, in his own house, the property of another person, to the amount of forty shillings; and if a wife steal the property of another to that amount, in the house of her husband, she shall have her clergy.

† *Sect. 5.* So also where a lodger stole a *bank note* in the room hired, and the indictment charged it to be in the dwelling-house of the landlord, the prisoner was allowed the benefit of his clergy, for it was a stealing in his own apartments, and not in the house of another.

† *Sect. 6.* It has also been decided, that where the property stolen is taken from *the person* of the possessor, though taken in the house of another, it is not within the statute: thus where the mistress of a lodging-house sent a bank note by her servant to a lodger in the first floor, to change, and the lodger, under pretence of going to his banker's to get cash, went away with it, the prisoner was held guilty of the simple larceny only: so also, that where a person, in possession of a large sum of money, was deluded by a ring-dropper to go into a public-house to share the value of the ring, and there induced to lay his money on the table, which the ring-dropper immediately took up and went away, it was decided, upon a case reserved for the opinion of the twelve Judges, that the ring-dropper having obtained the money from *the person* of the prosecutor, it was only a single felony, and not a stealing in the dwelling-house within the statute 12. Ann. c. 7.

† *Sect. 7.* And it has been ruled, that *bank notes*, and of course all those other securities for money which were denominated *choses in action* at common law, are not to be considered within the meaning of this statute; for although the statute 2. Geo. 2. c. 25. enacts, that the stealing of such things "shall be deemed and construed to be felony of the same nature and the same degree, and with or without the benefit of clergy, in the same manner as it would have been if the offender had stolen or taken by robbery any other goods of like value with the money due on such securities, or secured thereby;" yet as the Legislature could not, in the twelfth year of the reign of *Queen Anne*, have in contemplation a species of property which it was not a felony to steal until the second year of *George the second*, it is impossible to comprehend them under the word "*money*," and it has been decided (a), that they cannot be considered as "*goods or chattels, wares or merchandizes*."

† *Sect. 8.* It has also been ruled, that an indictment on this statute must state the name of the owner in whose house the larceny was committed, and that if the name be not truly stated, it is fatal to the capital part of the charge.

White's Case,
Cases C. L.
216.
Woodward's
Case, O.B.

Ost. Sess. 1785. McCabe's Case, O.B. May Sess. 1785.

† *Sect. 9.* It seems also, that if a larceny be committed in the *General Post-Office* to the amount of forty shillings, the indictment, in order to oust the offender of larceny under the 12. Ann. c. 7. may lay it to be the *dwelling-house* of the *Postmaster-General*. But *quære*,

See Hassell's
Case, Cases
Cro. Law 22.

CHAPTER THE THIRTY-SEVENTH.

O F

P I R A C Y.

† *Señ. 1.* A PIRATE is one who to enrich himself, either 8. St. Tr. 74^o by surprize or open force, sets upon merchants or others trading by sea to spoil them of their goods Kidd's Case, or treasure; and he is called *hostis humani generis*, and there- 8. St. Tr. 208. fore every nation between whom amity and peace subsist, al- 213. though there is no actual alliance, may punish a subject or foreigner for this offence.

† *Señ. 2.* THE KING OF ENGLAND hath not only an Sir Charles empire and sovereignty over the British seas for the punish- Hodges' ment of piracy, but, in concurrence with other princes and charge, O. B. states, an undoubted jurisdiction and power in the most re- 8. Will. 3. mote parts of the world. If any person therefore, native or foreigner, Christian or Infidel, Turk or Pagan, with whose country we are in amity, trade, or correspondence, shall be robbed or spoiled in the Narrow or other seas, whether the Mediterranean, Atlantic, Southern, or any branches thereof, either on this or the other side of the Line, it is piracy:

† *Señ. 3.* PIRACY, if committed by a subject, was formerly held to be a species of treason, being contrary to his natural allegiance; if by an alien, to be felony only: But 3. Inst. 113. since the statute of treason 25. Edw. 3. c. 2. it is held to be 4. Com. 71. only felony in a subject; and to this common-law offence the Legislature has also added some others.

But for the better understanding this subject I shall consider,

1. Who shall be deemed pirates.
2. Before what court they shall be tried.
3. In what manner they shall be punished.
4. Of the means which may be used to prevent piracy.

As

As to THE FIRST POINT, *viz.* Who shall be deemed pirates.

† *Sec. 4.* A PIRATE, at the common law, is a person who commits any of those acts of robbery and depredation upon the high seas, which if committed on land would have amounted to felony there.

See post.

Sec. 5. By 28. Hen. 8. c. 15. it is enacted, “That all treasons, felonies, robberies, murders, and confederacies committed in or upon the sea, or in any other river, haven, creek, or place where the admiral or admirals have or pretend to have power, authority or jurisdiction, shall be tried as directed by the act.”

Taking of things that may be spared upon necessity, and paying for them.

Sec. 6. But by 28. Hen. 8. c. 15. f. 4. it is provided, “That this act shall not extend to be prejudicial or hurtful to any person or persons for taking any victual, cables, ropes, anchors or sails, which any such person or persons (compelled by necessity) taketh of or in any ship which may conveniently spare the same, so the same person or persons pay out of hand for the same victual, cables, ropes, anchors or sails, money or money-worth to the value of the thing so taken, or do deliver for the same a sufficient bill obligatory to be paid in form following; that is to say, if the taking of the same things be on this side the straits of *Marroke*, then to be paid within four months, and if it be beyond the said straits of *Marroke*, then to be paid within twelve months next ensuing the making of such bills, and that the makers of such bills well and truly pay the same debt at the day to be limited within the said bills.”

Subjects committing piracy on others of the king's subjects by commission from any foreign prince, shall be adjudged pirates.

† *Sec. 7.* It being also doubted by many eminent civilians whether, during the Revolution, the persons who had captured English vessels by virtue of commissions granted by *James the second* at his court at *St. Germain's*, after his abdication of the throne of *England* could be deemed *pirates*, the grantor still having, as it was contended, the right of war in him; IT IS ENACTED by 11. & 12. Will. 3. c. 7. f. 8. “That if any of his Majesty's natural-born subjects, or denizens of this kingdom, shall commit any piracy or robbery, or any act of hostility, against others his majesty's subjects upon the sea, under colour of any commission from any foreign prince or state, or pretence of authority from any person whatsoever, such offender or offenders, and every of them, shall be deemed, adjudged, and taken to be pirates, felons, and robbers; and they and every of them, being duly convicted thereof, according to this act, or
“ the

“ the aforesaid statute of king *Henry the eighth*, shall
 “ have and suffer such pains of death, loss of lands, goods,
 “ and chattels, as pirates, felons, and robbers upon the seas
 “ ought to have and suffer.”

† *Sec. 8.* But doubts having arisen whether such of-
 fender, by adherence to the king's enemies, were not guilty
 of *high treason*, it is enacted by 18. Geo. 2. c. 30. “ That
 “ all persons being natural born subjects or denizens of his
 “ majesty, who during the present or any future wars have
 “ committed, or shall commit any hostilities upon the sea,
 “ or in any haven, river, creek, or place, where the admiral
 “ or admirals have power, authority, or jurisdiction against
 “ his majesty's subjects, by virtue or under colour of any
 “ commission from any of his majesty's enemies, or have
 “ been or shall be any other ways adherent, or giving aid or
 “ comfort to his majesty's enemies upon the sea, or in any ha-
 “ ven, river, creek, or place, where the admiral or admirals have
 “ power, authority, or jurisdiction, may be tried as pirates,
 “ felons, and robbers, in the said court of admiralty, on ship-
 “ board, or upon the land, in the same manner as persons
 “ guilty of piracy, felony, and robbery, are by the said act
 “ directed to be tried; and such persons being upon such
 “ trial convicted thereof, shall suffer such pains of death,
 “ loss of lands, goods and chattels, as any other pirates,
 “ felons, and robbers ought, by virtue of the said recited act
 “ of the eleventh year of king *William the third*, or any
 “ other act, to suffer.”

Subjects or
 denizens,
 committing
 hostilities at
 sea, &c. a-
 gainst his ma-
 jesty's sub-
 jects, or giv-
 ing aid, &c. to
 enemies at
 sea, may be
 tried as pi-
 rates.

11. W. 3. c. 7.

† *Sec. 9.* By 11. and 12. Will. 3. c. 7. f. 9. it is fur-
 ther enacted, “ That if any commander or master of any
 “ ship, or any seaman or mariner, shall in any place where
 “ the admiral hath jurisdiction, betray his trust, and turn
 “ pirate, enemy, or rebel, and piratically and feloniously
 “ run away with his or their ship or ships; or any barge,
 “ boat, ordnance, ammunition, goods, or merchandizes,
 “ or yield them up voluntarily to any pirate, or shall bring
 “ any seducing messages from any pirate, enemy, or rebel,
 “ or consult, combine, or confederate with, or attempt or
 “ endeavour to corrupt any commander; master, officer, or
 “ mariner to yield up or run away with any ship, goods, or
 “ merchandizes, or turn pirate, or go over to pirates, or if
 “ any person shall lay violent hands on his commander,
 “ whereby to hinder him from fighting in defence of his
 “ ship and goods committed to his trust, or that shall con-
 “ fine his master, or make, or endeavour to make a revolt
 “ in the ship, shall be adjudged, deemed, and taken to be a
 “ pirate, felon, and robber, and being convicted thereof,
 “ according to the directions of this act, shall have and suf-
 “ fer

Commander
 or mariner
 who shall be-
 tray his trust,
 or turn pi-
 rate, &c.

or person lay-
 ing violent
 hands on his
 commander,
 &c. shall be
 adjudged a
 pirate, and
 suffer death.

“ fer pains of death, loss of lands, goods, and chattels, as
 “ pirates, felons, and robbers upon the seas ought to have
 “ and suffer.”

Persons setting forth, or aiding or assisting any pirate, &c. shall be adjudged accessories :

The like for concealing pirate, &c.

+ *Stat. 10.* By 11. and 12. Will. 3. c. 7. f. 10. it is enacted, “ That all and every person and persons whatsoever
 “ who, after the twenty-ninth day of *September* in the year
 “ of Our Lord one thousand seven hundred, shall either on
 “ the land, or upon the seas, knowingly or wittingly set
 “ forth any pirate, or aid and assist, or maintain, procure,
 “ command, counsel or advise any person or persons whatsoever, to do or commit any piracies or robberies upon
 “ the seas, and such person and persons shall thereupon
 “ do or commit any such piracy or robbery, then all and
 “ every such person or persons whatsoever, so as aforesaid
 “ setting forth any pirate, or aiding, assisting, maintaining,
 “ procuring, commanding, counselling or advising the
 “ same, either on the land or upon the sea, shall be and
 “ are hereby declared, and shall be deemed and adjudged
 “ to be accessory to such piracy and robbery done and committed : And further, that after any piracy or robbery is
 “ or shall be committed by any pirate or robber whatsoever,
 “ every person and persons, who knowing that such pirate
 “ or robber has done or committed such piracy and robbery, shall on the land, or upon the sea, receive, entertain or conceal any such pirate or robber, or receive or
 “ take into his custody any ship, vessel, goods or chattels
 “ which have been by any such pirate or robber piratically
 “ and feloniously taken, shall be and are hereby likewise
 “ declared, deemed and adjudged to be *accessary* to such piracy and robbery.” But by 8. Geo. 1. c. 24. f. 3 they shall be deemed and taken to be principal pirates, felons and robbers.

+ *Stat. 11.* By 8. Geo. 1. c. 24. it is enacted, “ That in
 “ case any person or persons belonging to any ship or vessel
 “ whatsoever, upon meeting any merchant ship or vessel on
 “ the high seas, or in any port, haven, or creek whatsoever,
 “ shall forcibly board or enter into such ship or vessel, and,
 “ though they do not seize and carry off such ship or
 “ vessel, shall throw overboard or destroy any part of the
 “ goods or merchandizes belonging to such ship or vessel,
 “ the person or persons who shall be guilty thereof shall in
 “ all respects be deemed and punished as *pirates*.”

In the exposition of these statutes it hath been holden,

Summary 77. *Stat. 12.* FIRST, The statute 28. Hen. 8. c. 15 does not
 C. C. C. 502. alter the nature of the offence so as to make that which was
 before

before a felony only by the civil law, now become a felony by the common law ; for the offence must still be alledged as done upon the sea, and is no way cognizable by the common law but only by virtue of this statute, which, by ordaining that in some respects it shall have the like trial and punishment as are used for felony at common law, shall not be carried so far as to make it also agree with it in other particulars which are not mentioned.

Sec. 13. SECONDLY, That this offence remains as before of a special nature, and that it shall not be included in a general pardon of all felonies, which, as it was, before this statute, to be expounded of no felonies which are such only by the civil law, shall continue still to have the same construction. Moor 756.
3. Inst. 112.
Co. Litt 391.

Sec. 14. THIRDLY, That no persons shall, in respect of this statute, be construed to be, or punished as, accessaries to piracies before or after, as they might have been if it had been made felony by the statute, whereby all those would incidently have been made accessaries in the like cases in which they would have been accessaries to a felony at common law. 3. Inst. 112.
Sum. 77. 215.

Sec. 15. FOURTHLY, That the indictment for this offence must alledge the fact to be done upon the sea, and must have both the words *felonice* and *piratice* : And that no offence is punishable by virtue of this act as piracy, which would not have been felony if done on the land, and consequently that the taking of an enemy's ship by an enemy is not within the statute. 3. Inst. 112.
S. P. C. 114.
1. Roll. 175.

Sec. 16. FIFTHLY, It is agreed, that this statute extends not to offences done in creeks or ports within the body of a county, because they are, and always were, cognizable by the common law. Moor 756.
1. Roll. 175.
Summary 77.
3. Inst. 113.

† *Sec. 17.* SIXTHLY, But it hath been decided, that if *A.* standing on the shore of a harbour, fire a loaded musket at a revenue cutter which had struck upon a sand bank in the sea, about one hundred yards from the shore, by which firing a person is maliciously killed on board the boat, it is piracy ; for the offence is committed where the death happens, and not at the place from whence the cause of the death proceeds. Case of G.
Coombes, Ad-
miralty Seif.
O. B. June
1785, Cases
C. L. 300.
See Rex v.
Alfop,
1. Show. 339.

As to THE SECOND POINT, viz Before what court the offence of piracy shall be tried.

Trial of offences committed upon the sea, or within the admiral's jurisdiction, by the king's commission. Altered by 11. & 12. W. 3. c. 7. 3. Inst. 147. Hob. 146. Dyer 211. pl. 33.

Sec. 18. It is agreed, that *piracy* was formerly only cognizable by the *civil law*, in the courts of THE ADMIRAL; but it being inconsistent with the liberties of the nation that any man's life should be taken away unless by the judgment of his peers or the common law of this land, it is enacted by 28. Hen. 8. c. 15. f. 1. "That all treasons, felonies, robberies, murders and confederacies hereafter to be committed in or upon the sea, or in any other haven, river, creek or place where the admiral or admirals have or pretend to have power, authority or jurisdiction, shall be inquired, tried, heard, determined and judged, in such shires and places in the realm, as shall be limited by the king's commission or commissions to be directed for the same, in like form and condition as if any such offence or offences had been committed or done in or upon the land; and such commissions shall be had under the king's great seal, directed to the admiral or admirals, or to his or their lieutenant, deputy and deputies, and to three or four such other substantial persons as shall be named or appointed by the lord chancellor of *England* for the time being, from time to time, and as oft as need shall require, to hear and determine such offences after the common course of the laws of this realm, used for treasons, felonies, murders, robberies and confederacies of the same, done and committed upon the land within this realm."

The commissioners authorized. 1. Leon. 106. 270. 3. Bulst. 28, 29.

Sec. 19. By 28. Hen. 8. c. 15. f. 2. it is further enacted, "That such persons to whom such commission or commissions shall be directed, or four of them, at the least, shall have full power and authority to inquire of such offences, and of every of them, by the oaths of twelve good and lawful inhabitants in the shire limited in their commission, in such like manner and form as if such offences had been committed upon the land within the same shire; and that every indictment, found and presented before such commissioners, of any treasons, felonies, robberies, murders, manslaughters, or such other offences, being committed or done in or upon the seas, or in or upon any other haven, river or creek, shall be good and effectual in the law; and if any person or persons happen to be indicted for any such offence done or hereafter to be done upon the seas, or in any other place above limited, that then such order, process, judgment and execution shall be used, had, done and made, to and against every such person and persons so being indicted,

“ as against traitors, felons and murderers, for treason, felony, robbery, murder, or other such offences done upon the land, as by the laws of this realm is accustomed ; and that the trial of such offence or offences, if it be denied by the offender or offenders, shall be had by twelve lawful men inhabitants in the shire limited within such commission, which shall be directed as is aforesaid, and no challenge or challenges to be had for the hundred.”

† *Señ. 20.* By 28. Hen. 8. c. 15. f. 5. Provided always, That whensoever any such commission for the punishment of the offences aforesaid, or of any of them, shall be directed or sent to any place within the jurisdiction of the five ports, that then every such commission shall be directed unto the lord Warden of the said ports for the time being, or to his deputy, and unto three or four such other person or persons as the lord chancellor for the time being shall name and appoint ; any thing in this present act to the contrary notwithstanding.”

Commissions directed into any place within the Cinque Ports.

† *Señ. 21.* By 28. Hen. 8. c. 15. f. 6. Provided always, That whensoever any commission shall be directed unto the five ports for the inquisition and trials of any of the offences expressed in this act, that every such inquisition and trial to be had by virtue of such commission, shall be made and had by the inhabitants in the said five ports, or the members of the same ; any thing in this act to the contrary thereof notwithstanding.”

27. H. 8. c. 4.
1. Geo. 1. f. 2.
2. c. 25.
4. Geo. 1.
c. 11.
8. Geo. 1.
c. 24. 28.
And see
18. Geo. 2.
c. 30. for the more effectual suppression of piracy.

† *Señ. 22.* By 33. Geo. 3. c. 67. f. 7. “ In case any of the offences mentioned in the statute shall be committed on the high seas, then, and in every such case, the offence or offences so committed shall be triable, and the person or persons so offending may be prosecuted and tried by virtue of this act, in any session of oyer and terminer and gaol-delivery for the trial of offences committed on the high seas, within the jurisdiction of the admiralty of England ; any thing herein contained to the contrary in any wise notwithstanding.”

Offences committed on the high seas triable in any session for trial of offences committed thereon.

† *Señ. 23.* But by 33. Geo. 3. c. 67. f. 8. it is provided, “ That no person or persons shall be prosecuted by virtue of this act, for any of the offences aforesaid, unless such prosecution be commenced within twelve calendar months after the offence committed.”

Prosecutions to be commenced within a year.

How and where piracies, felonies, &c. committed on the sea may be tried.

† *Stat.* 24. And it being doubted whether the 28. Hen. 8. c. 15. had not taken away the trial of piracy before the admiral, his lieutenant or commissary, which occasioned a total disuse of such manner of trial, to the encouragement of pirates who could not be tried by this statute until brought to *England*, at a great trouble and expence, it is therefore enacted by 11. and 12. Will. 3. c. 7. "That all piracies, felonies, and robberies committed in or upon the sea, or in any haven, river, creek, or place, where the admiral or admirals have power, authority, or jurisdiction, may be examined, inquired of, tried, heard and determined, and adjudged, according to the directions of this act, in any place at sea, or upon the land, in any of his majesty's islands, plantations, colonies, dominions, forts or factories, to be appointed for that purpose by the king's commission or commissions under the great seal of *England*, or the seal of the admiralty of *England*, directed to all or any of the admirals, vice admirals, rear-admirals, judges of vice-admiralties, or commanders of any of his majesty's ships of war, and also to all or any such person or persons, officer or officers, by name, or for the time being, as his majesty shall think fit to appoint; which said commissioners shall have full power jointly or severally by warrant under the hand and seal of them, or any one of them, to commit to safe custody any person or persons against whom information of piracy, robbery, or felony, upon the sea, shall be given upon oath (which oath they or any one of them shall have full power, and are hereby required to administer), and to call and assemble a court of admiralty on ship-board, or upon the land, when and as often as occasion shall require; which court shall consist of seven persons at the least."

Admiralty court to consist of seven persons.

† *Stat.* 25. By 11. and 12. Will. 3. c. 7. s. 2. "And if so many of the persons aforesaid cannot conveniently be assembled, any three of the aforesaid persons (whereof the president or chief of some *English* factory, or the governor, lieutenant-governor, or member of his majesty's councils in any of the plantations or colonies aforesaid, or commander of one of his majesty's ships, is always to be one, shall have full power and authority, by virtue of this act, to call and assemble any other persons on ship-board, or upon the land, to make up the number of seven."

Persons qualified to sit and vote, &c

† *Stat.* 26. By 11. and 12. Will. 3. c. 7. s. 3. it is provided, "That no persons but such as are known merchants,

"chants,

“chants, factors, or planters, or such as are captains, lieutenants, or warrant-officers in any of his majesty’s ships of war, or captains, masters, or mates of some *English* ship, shall be capable of being so called, and sitting and voting in the said court.”

† *Señ. 27.* By 11. and 12. Will. 3. c. 7. s. 4. “Such persons called and assembled as aforesaid, shall have full power and authority, according to the course of the admiralty, to issue warrants for bringing any persons accused of piracy or robbery before them, to be tried, heard, and adjudged; and to summon witnesses, and to take informations and examinations of witnesses upon their oath; and to do all things necessary for the hearing and final determination of any case of piracy, robbery, and felony; and to give sentence and judgment of death, and to award execution of the offenders convicted and attainted as aforesaid, according to the civil law, and the methods and rules of the admiralty; and that all and every person and persons so convicted and attainted of piracy or robbery, shall have and suffer such losses of lands, goods and chattels, as if they had been attainted and convicted of any piracies, felonies, and robberies, according to the aforementioned statute made in the reign of king *Henry the eighth.*”

Power of court so called in case of trial of pirate, &c.

† *Señ. 28.* By 11. and 12. Will. 3. c. 7. s. 5. “Provided always, that so soon as any court shall be assembled as aforesaid, either on ship-board or upon the land, the king’s commission shall first be openly read, and the said court then and there shall be solemnly and publicly called and proclaimed; and then the president of the court shall, in the first place, publicly in open court take the following oath, *viz.*”

King’s commission to be first read.
President to take the following oath;

“I *A. B.* do swear in the presence of Almighty God, that I will truly and impartially try and adjudge the prisoner or prisoners which shall be brought upon his or their trials before this court, and honestly and duly, on my part, put his majesty’s commission for the trying of them in execution, according to the best of my skill and knowledge: and that I have no interest, directly or indirectly, in any ship or goods, for the piratical taking of which any person stands accused, and is now to be tried;

“*So help me God.*”

and then to administer the same to the other members.

How prisoners shall be brought before them and tried.

Prisoners pleading not guilty, Witnesses shall be examined *viva voce*.

How sentence shall be executed.

† *Stat.* 29. By 11. and 12. Will. 3. c. 7. s. 6. And he having taken the oath in manner aforesaid, shall immediately administer the same oath to every person who shall sit, and have and give a voice in the said court upon the trial of such prisoner or prisoners as aforesaid; and immediately thereupon the said prisoner or prisoners shall be formally brought before them; and then the register of the said court shall openly and distinctly read the articles against such prisoner or prisoners, upon which they or any of them is or are to be tried; wherein shall be set forth the particular fact or facts of piracy, robbery, and felony, with the time and place when and where, and in what manner it was committed; and then each prisoner shall be asked, Whether he be guilty of the said piracy and robbery, or felony, or not guilty? Whereupon every such prisoner shall immediately plead thereunto, Guilty, or Not guilty, or else it shall be taken as confessed, and he shall suffer such pains of death, loss of lands, goods and chattels, and in like manner, as if he or they had been attainted or convicted upon the oath of witnesses, or his own confession: But if any prisoner shall plead not guilty, witnesses shall be produced by the register, and duly sworn and examined openly, *viva voce*, in the prisoner's presence: and after a witness hath answered all the questions proposed by the president of the court, and given his evidence, it shall and may be lawful for the prisoner to have the witness cross-examined, by first declaring to the Court what questions he would have asked, and thereupon the president of the court shall interrogate the witness accordingly; and every prisoner shall have liberty to bring witnesses for his defence, who shall be sworn, and examined upon oath, as the witnesses were that testified against him; and afterwards the prisoner shall be fairly heard what he can say for himself: all which being done, the prisoner shall be taken away and kept in safe custody, and all other persons, except the register, shall withdraw from the said court, and then the Court shall consider of the evidence which hath been given, and debate the matters and circumstances of the prisoner's case, and the president of the court shall collect all the votes of the persons who do sit and have voices in the said court, beginning at the junior first, and ending with himself; and according to the plurality of voices, sentence and judgment shall be then given and pronounced publicly in the presence of the prisoner or prisoners, being called in again; and according to such sentence and judgment the person or persons attainted shall be executed and put to death, at such time, in such manner, and in such place upon the sea, or within the
“ ebbing

“ ebbing or flowing thereof, as the president, or the major
 “ part of the Court, by warrant directed to a provost mar-
 “ shal (which the president or said major part shall have
 “ power to constitute) shall appoint.”

† *Sect. 30.* By 11. and 12. Will. 3. c. 7. f. 7. Register of
 “ Some person, being a public notary, shall be regis- the court to
 “ ter of the court; and in case of his absence, death, be a public
 “ or incapacity, or for want of a person so qualified, the notary.
 “ president of the court shall and may appoint a register,
 “ giving him an oath (which he is hereby empowered to
 “ administer), duly, faithfully, and impartially to execute
 “ his office; which register shall prepare all warrants and
 “ articles, and take care to provide all things requisite for
 “ any trial, according to the substantial and essential parts
 “ of proceedings in a court of admiralty, in the most sum-
 “ mary way; and shall take minutes of the whole proceed-
 “ ings, and enter them duly in a book by him to be kept
 “ for that purpose; and shall from time to time, as op-
 “ portunity offers, transmit the same, with the copies of
 “ all articles and judgments given in any such cases, in any
 “ court whereof he shall be register, unto the high court of
 “ admiralty of *England*.”

† *Sect. 31.* By 11. and 12. Will. 3. c. 7. f. 16. “ Pro- How commis-
 “ vided always, that whensoever any commission for the sions for try-
 “ trial and punishment of the offences aforesaid, or any ing of offences
 “ of them, shall be directed or sent to any place within the within the ju-
 “ jurisdiction of the Cinque Ports, that then every such risdiction of
 “ commission shall be directed unto the lord warden of the the Cinque
 “ Cinque Ports for the time being, or to his lieutenant, Ports shall be
 “ and unto such other persons as the lord high chancellor, directed, and
 “ or keeper of the great seal of *England* for the time being, inquisition
 “ or commissioners for the custody of the great seal, shall made,
 “ name and appoint; and likewise that every inquisition
 “ and trial, to be had by virtue of such commission so di-
 “ rected and sent to any place in the said Cinque Ports, shall
 “ be made and had by the inhabitants of the said Cinque
 “ Ports, or the members of the same; any thing in this act
 “ to the contrary thereof notwithstanding.”

† *Sect. 32.* And by 4. Geo. 1. c. 11. f. 7. “ All Offenders a-
 “ and every person and persons who have committed gainst 11. &
 “ or shall commit any offence or offences, for which 12. W. 3. c. 7.
 “ they ought to be adjudged, deemed and taken to be pi- may be tried
 “ rates, felons or robbers, by an act made in the parlia- as by 28. Hen.
 “ ment holden in the eleventh and twelfth years of 8. c. 15.
 “ the reign of his late majesty king *William the Third*, intituled
 “ *An act for the more effectual suppression of piracy*, may be
 “ tried and judged for every such offence in such manner
 “ and

See farther, "and form as in and by an act made in the twenty-
6. Geo. 1. c. 19. "eighth year of the reign of king *Henry the eighth*
and 8. Geo. 1. "is directed and appointed for the trial of pirates,
c. 24. "and shall and ought to be utterly debarred and ex-
"cluded from the benefit of clergy for the said offences ;
"any law or statute to the contrary thereof in any wise not-
"withstanding."

Not to be tri- + *Seet. 33.* By 18. Geo. 2. c. 30. f. 2. it is enacted, "That
ed again for "any person who shall be tried and acquitted, or convict-
the same "ed, according to this act, for any of the said crimes, shall
crime as high "not be liable to be indicted, prosecuted, or tried again in
treason. "Great Britain, or elsewhere, for the same crime or fact as
"high treason."

Criminals not + *Seet. 34.* By 18. Geo. 2. c. 30. f. 3. it is pro-
tried by this vided, "That nothing in this act contained shall be con-
act may be "sidered to extend to prevent any persons guilty of any of
tried for high "the said crimes, who shall not be tried according to this
treason, by "act, from being tried for high treason within this realm,
28. H. 8. c. 15. "according to the aforesaid act of the twenty-eighth year
"of king *Henry the eighth*.

A session of + *Seet. 35.* And for the more speedily bringing offen-
the court of ders to justice, and to prevent the inconveniences occa-
admiralty to sioned by want of frequently holding a session of admiralty,
be held in it is enacted by 32. Geo. 2. c. 25. f. 20. "That from and after
March and "the first day of *June* one thousand seven hundred and
October "fifty-nine, a session of *oyer* and *terminer* and gaol-delivery,
yearly. "for the trial of offences committed upon the high seas
"within the jurisdiction of the admiralty of *England*, shall
"be held twice at the least in every year ; that is to say,
"in the several months of *March* and *October* in each year,
"at *Justice Hall* in the *Old Bailey*, *London* ; except at such
"times as the sessions of *oyer* and *terminer* and gaol-delivery
"for the city of *London* and county of *Middlesex* shall be
"appointed to be there held ; or in such other places,
"within that part of *Great Britain* called *England*, as the
"lord high admiral of *Great Britain*, or the commissioners
"for executing the office of lord high admiral of *Great*
"*Britain* for the time being, or any three or more of
"them, shall by any letter or order in writing under their
"hands directed to the judge of the high court of admiralty
"in *England* for the time being, appoint."

Commission- + *Seet. 36.* And by 32. Geo. 2. c. 25. f. 21. it is
ers of the further enacted, "That from and after the first day
court, and "of *June* one thousand seven hundred and fifty-nine,
justices of the "it shall and may be lawful, not only to and for
peace, im- "any one or more of the commissioners for the time being,
powered to "named in the commission of *oyer* and *terminer* for the
take infor- "trying
mations of pi-
racy &c.

“ trying of offences committed within the jurisdiction of
 “ the admiralty of *England*, but also to and for any one or
 “ more of the justices of the peace for the time being, of
 “ any county, riding, division, or place, within that part
 “ of *Great Britain* called *En-land*, and they are hereby re-
 “ spectively authorised and impowered, from time to time,
 “ to take any information or informations of any witness
 “ or witnesses in writing upon oath, touching any piracy,
 “ felony, or robbery, done or committed, or charged to
 “ have been done or committed, in or upon the sea, or in
 “ any haven, river, creek, or place, where the admiral
 “ or admirals hath or have power, authority, or jurif-
 “ diction; and thereupon (if such commissioner or com-
 “ missioners, or justice or justices of the peace respectively
 “ shall see cause) by any warrant or warrants under his or
 “ their hand and seal, or hands and seals, to cause the per-
 “ son or persons accused in such information or informa-
 “ tions to be apprehended and committed to the gaol of the
 “ county or place wherein the same information or in-
 “ formations shall be taken, there to remain until discharged
 “ by due course of law.”

† *Señ. 37.* And by 32. Geo. 2. c. 25. s. 22. it is further enacted,
 “ That such of the said commissioners, or justices of the peace,
 “ who shall cause any such person or persons to be com-
 “ mitted as is last mentioned, shall, and he or they is or
 “ are hereby respectively required at the same time to oblige
 “ all and every such other person or persons whom such
 “ commissioner or commissioners, or justice or justices of
 “ the peace shall judge necessary to prosecute and give evi-
 “ dence against the person or persons who shall be so com-
 “ mitted as aforesaid, to enter into one or more recogni-
 “ zance or recognizances to his majesty, in a sufficient
 “ penalty for his, her, or their appearing at the then next
 “ session of *oyer* and *terminer*, and gaol-delivery, to be held
 “ for the jurisdiction of the admiralty of *England*, there to
 “ prosecute and give evidence against the person or persons
 “ who shall be committed as aforesaid: And if any person
 “ shall refuse to enter into such recognizance to prosecute
 “ or give evidence as shall be required, he, she, or they so
 “ refusing, shall be committed by any such commissioner
 “ or commissioners, justice or justices, to the gaol of the
 “ county or place in which the person so refusing shall be,
 “ until the next sessions of a Admiralty shall be held, or such
 “ persons shall enter into such recognizance as shall be re-
 “ quired as aforesaid; which recognizance or recognizances,
 “ together with the information or informations taken
 “ touching the offence or offences wherewith the person or

“ persons to be committed as aforesaid shall be charged,
 “ the said commissioner or commissioners, or justice or jus-
 “ tices of the peace, before whom the same shall be taken,
 “ shall and they are hereby respectively required to transmit
 “ with all convenient speed to the register for the time
 “ being of the high court of admiralty of *England*, to be by
 “ him forthwith laid before the judge for the time being of
 “ the same court, and afterwards to be kept among the re-
 “ cords of that court.”

The marshal,
 sheriffs, and
 other peace-
 officers, are to
 obey and exe-
 cute all pre-
 cepts and or-
 ders of the
 commissioners
 and justices.

† *Sec.* 38. And by 32. Geo. 2. c. 25. s. 23. it
 is further enacted, “ That the marshal of the ad-
 “ miralty for the time being, and his deputy or de-
 “ puties, and all sheriffs, bailiffs, stewards, constables,
 “ headboroughs, tythingmen, keepers of gaols and prisons,
 “ and all other officers whatsoever, for keeping of the peace
 “ (as well within liberties as without) shall, and they, and
 “ every of them, are hereby respectively authorised and re-
 “ quired, from time to time, diligently to execute, perform
 “ and obey all such precept and precepts, warrant and war-
 “ rants, and other order and orders, as shall at any time or
 “ times hereafter be made, directed, issued, or given to
 “ them or any of them respectively, by any one or more
 “ of the said commissioners named in the commission of *oyer*
 “ and *terminer*, or justices of the peace, by virtue or in pur-
 “ suance of this act, touching any of the matters or things
 “ herein contained.”

Rex v. Muil-
man, Hilary
6. Geo. 3.
Parker 241.

† *Sec.* 39. It hath been determined, that two justices
 may take a recognizance for the appearance of one charged
 with felony on the high seas at the sessions of admiralty,
 and the recognizance may be estreated into the exchequer.

As to THE THIRD POINT, *viz.* In what manner piracy
 is punished.

The punish-
 ment of offen-
 ders.

1. Saik. 85.
 Co. Lit. 521. a.

† *Sec.* 40. By 28. Hen. 8. c. 15. s. 2. it is enacted,
 “ That such as shall be convict of any such offence or
 “ offences, by verdict, confession, or process, by authority
 “ of any such commission, shall have and suffer such pains
 “ of death, losses of lands, goods and chattels, as if they
 “ had been attainted and convicted of any treasons, felo-
 “ nies, robberies, or other the said offences done upon the
 “ lands.”

Moor 756. pl.
1044.

† *Sec.* 41. By 28. Hen. 8. c. 15. s. 3. it is recited, “ That
 “ for treasons, robberies, felonies, murders and confederacies
 “ done upon the sea or seas, or in any place above re-
 “ hearsed, the offenders shall not be admitted to have
 “ the

“ the benefit of his or their clergy, but be utterly excluded thereof and from the same, and also of the privilege of any sanctuary.”

† *Stat.* 42. By 8. Geo. 1. c. 24. f. 4. it is further enacted, “ That all and every offender or offenders convicted of any piracy, felony or robbery, by virtue of this act, shall not be admitted to have the benefit of clergy, but be utterly excluded of and from the same.” Offenders convicted on this act, excluded the benefit of clergy.

† *Stat.* 43. An attainder for this offence corrupts not the blood, inasmuch as the statute only says that the offender shall suffer such pains of death, &c. as if he were attainted of a felony at common law; but says not that the blood shall be corrupted, &c. (1). 3. Inst. 112. Co. Lit. 392. B. 2. c. 23. f. 12.

(1) If the indictment be *vi et armis et felonice*, &c. as a robbery at common law, the blood may be corrupted; for piracy upon the statute is robbery, and offenders have been so indicted in the king's bench, and on conviction executed. But if the indictment be *piratice depredavit*, in the style of the civil law, the attainder corrupts not the blood. And this distinction will reconcile the passages upon this subject in 3. Inst. c. 49. and Co. Lit. f. 745. Vide 1. Hale 355.

Stat. 44. Yet it has been resolved, that an offender standing mute on an arraignment by force of this statute, shall have judgment of *pain fort et dure*; for the words of the statute of 28. Hen. 8. c. 15. are, that a commission shall be directed to hear and determine such offences after the course of the common law of the land, &c.—† But by 12. Geo. 3. c. 3. “ standing mute in piracy amounts to a conviction, and the Court shall award the same judgment as on a conviction by verdict or confession.” 3. Inst. 114. Dyer 241. 308.

As to THE FOURTH PARTICULAR, viz. Of the means which may be used to prevent piracy.

† *Stat.* 45. By 11. and 12. Will. 3. c. 7. f. 11. it is recited, “ That it will conduce to the suppressing of robberies on the sea, if due encouragement be given, and rewards allowed to such commanders, masters, and other officers, seamen and mariners, as shall either bravely defend their own ships, or take, seize and destroy pirates, sea rovers, and enemies;” and enacted, “ That when any *English* ship shall have been defended against any pirates, enemies or sea rovers by fight, and brought to her designed port, in which fight any of the officers or seamen shall have been killed, or wounded, it shall and may be lawful to and for the judge Encouragement for commanders and mariners to defend their ships against pirates, &c.

“ of his majesty's high court of admiralty, or his surrogate in the port of *London*, or the mayor, bailiff, or chief officer in the several out-ports of this kingdom, upon the petition of the master or seamen of such ship, so defended as aforesaid, to call unto him four or more good and substantial merchants, and such as are no adventurers or owners of the ship or goods so defended, and have no manner of interest therein, and by advice with them to raise and levy upon the respective adventurers and owners of the ship and goods so defended, by process out of the said court, such sum or sums of money as himself and the said merchants, by plurality of voices, shall determine and judge reasonable, not exceeding two pounds *per centum* of the freight, and of the ship and goods so defended, according to the first costs of the goods; which sum or sums of money so raised shall be distributed among the captain, master, officers, and seamen of the said ship, or widows and children of the slain, according to the direction of the judge of the said court, or his surrogate in the port of *London*, or the mayor, bailiff or chief officer in the several out-ports of this kingdom, with the approbation of the merchants aforesaid, who shall proportion the same, according to their best judgment, unto the ship's company as aforesaid, having special regard unto the widows and children of such as shall have been slain in that service, and such as have been wounded or maimed.”

Reward to discoverer of any combination for running away with ship, &c

+ *Stat.* 46. By 11. and 12. Will. 3. c. 7. f. 12. And for the better and more effectual prevention of combinations and confederacies for the running away with or destroying of any ship, goods or merchandizes, it is further enacted, “ That a reward of ten pounds for every ship or vessel, of one hundred tons or under, and fifteen pounds for every ship or vessel of a greater burthen, shall be paid by the captain, commander, or master of every ship or vessel, wherein any such combination or confederacy shall be set on foot for the running away with or destroying any such ship, or the goods and merchandizes therein laden, to such person as shall first make a discovery thereof, upon due proof of such combination or confederacy; the same to be paid at the port where the wages of the seamen of the said ship are or ought to be paid, after such discovery and proof made.”

Seamen deserting merchant ships to lose wages.

+ *Stat.* 47. By 11. and 12. Will. 3. c. 7. f. 17. “ And for the prevention of seamen deserting of merchant ships abroad in parts beyond the seas, which is the chief occasion of their turning pirates, and of great detriment to

to trade and navigation in general ;" it is enacted, " That
 " all such seamen, officers or sailors, who shall desert the
 " ships or vessels wherein they are hired to serve for that
 " voyage, shall for such offence forfeit all such wages as
 " shall be then due to him or them."

† *Stat.* 48. By 8. Geo. 1. c. 24. f. 2. it is enacted, Ships and the goods forfeited, half to the crown, half to the discoverers.
 " That every ship or vessel which shall be fitted out with a
 " design to trade with, or supply, or correspond with any
 " pirate, and all and every goods and merchandizes put on
 " board the same for any intent or purpose to trade with any
 " pirate, felon or robber on the seas, shall be *ipso facto* forfeited;
 " one moiety thereof to the use of the king's majesty, his
 " heirs and successors, the other moiety to the person or
 " persons who shall first make discovery, and give informa-
 " tion of such intent or design ; and such person or per-
 " sons who shall first make such discovery, shall and may
 " sue for and recover the said ship or vessel, and all and
 " every the goods and merchandizes on board the same,
 " in the high court of admiralty."

† *Stat.* 49. By 8. Geo. 1. c. 24. f. 5. " To the end that Seamen maimed in fight against pirates, shall receive the rewards in 22. & 23. Car. 2. c. 11. and be admitted into Greenwich Hospital.
 a further encouragement may be given to all seamen and
 mariners to fight and defend their ships from pirates, it is
 enacted, " That in case any seaman or mariner on board any
 " merchant ship or vessel, or any other ship or vessel, shall be
 " maimed in fight against any pirate, every such seaman and
 " mariner, upon due proof of his being maimed in such
 " fight, shall not only have and receive the rewards already
 " appointed by a statute made in the twenty-second and
 " twenty-third years of the reign of king *Charles the*
second, intituled, *An act to prevent the delivering up of mer-*
chant ships, and for the increase of good and serviceable seamen,
 " but shall also be admitted into and provided for in *Green-*
wich Hospital, preferable to any other seaman or mariner
 " who is disabled from service, or getting a livelihood merely
 " by his age."

† *Stat.* 50. By 8. Geo. 1. c. 24. f. 6. it is further enacted, Masters or seamen not defending themselves against pirates, &c. forfeit their wages and suffer six months imprisonment.
 " That in case any commander, master, or other officer, or
 " any seaman or mariner of any merchant ship or vessel
 " which carries guns and arms, shall not, when they are at-
 " tacked by any pirate, or by any ship or vessel on which
 " any such pirate is on board, fight and endeavour to de-
 " fend themselves, and their said ship or vessel, from being
 " taken by the said pirate, or shall utter any words to dis-
 " courage the other mariners from defending the ship, and
 " by

“ by reason thereof the said ship or vessel shall fall into the
 “ hands of such pirate ; then, and in every such case, every
 “ such commander or master, or other officer, and every
 “ seaman or mariner, who shall not fight and endeavour to
 “ defend and save the said ship or vessel, or who shall utter
 “ any such words as aforesaid, shall lose and forfeit all and
 “ every part of the wages due to him and them respectively,
 “ to the owner and owners of the said ship or vessel, and
 “ shall not be permitted to sue for or recover the same, or
 “ any part thereof, in any court either of law or equity, and
 “ as a farther punishment shall suffer six months imprison-
 “ ment.”

Masters shall
 not advance
 to any seaman
 above half his
 wages while
 beyond sea

† *Stat. 51. By 8. Geo. 1. c. 24. s. 7.* “ And for prevention of
 seamen or mariners deserting merchant ships or vessels abroad
 in the plantations, or in any other parts beyond the seas,
 which is the chief occasion of their turning pirates, and of
 great detriment to trade and navigation, and is chiefly occa-
 sioned by the owner or owners of ships or vessels paying
 wages to the seamen or mariners when abroad :” it is en-
 acted, “ That no master or owner of any merchant
 “ ship or vessel shall pay or advance, or cause to be paid or
 “ advanced to any seaman or mariner, during the time he
 “ shall be in parts beyond the seas, any money or effects
 “ upon account of wages exceeding one moiety of the
 “ wages which shall be due at the time of such payment,
 “ until such ship or vessel shall return to *Great Britain* or
 “ *Ireland*, or the plantations, or to some other of his majesty’s
 “ dominions whereto they belong, and from whence they
 “ were first fitted out ; and if any such master or owner of
 “ such merchant ship or vessel shall pay or advance, or cause
 “ to be paid or advanced, any wages to any seaman or mari-
 “ ner above the said moiety, such master or owner shall
 “ forfeit and pay double the money he shall so pay or ad-
 “ vance, to be recovered in the high court of admiralty, by
 “ any person who shall first discover and inform of the
 “ same.”

CHAPTER THE THIRTY-EIGHTH.

OF

BURGLARY.

OFFENCES against the habitation of a man are of two kinds : F. Cor. 178.
185. 264.

1. Burglary.

Pulton 132.

2. Arson.

BURGLARY is a felony at the common law, in breaking and entering the mansion-house of another, or, as some say, the walls, or gates of a walled town, in the night, to the intent to commit some felony within the same, whether the felonious intent be executed, or not. Staun. 30.
1. Hale 549.
Dalt. c. 151.
Cicero pro
Dom. c. 41.
Leg. Can.

1. 61. Wilk. Leg. Ang. Sax. p. 273. Spelman tit. Hamfecken. Sum. 79. 2. Hal-
360. 22. Aff. 39. 95. B. Cor. 93. 3. Inst. 63. Crom. 31. 4. Comm. 223.

For the better understanding whereof, I shall consider the following particulars :

1. What shall be accounted night-time for this purpose.
2. Whether there must be both an actual entry and breaking.
3. What breaking is sufficient.
4. What entry is sufficient.
5. In what place this offence may be committed.
6. What degree of guilt is required in the principal intention.
- † 7. In what manner burglary is deprived of the benefit of clergy.
- † 8. Of statutes tending to prevent this offence.

As to THE FIRST POINT, *viz.* What shall be accounted *night-time* for this purpose.

Dalt. c. 151.
S. P. C. 30.
3. Inst. 63.
Savil 47.
Crom. 32, 33.
7. Co. 6. 34.
1. Hale 550.
Roll. 524.
Moor 660.
Cro. Eliz. 583.
9. Co. 66. 4.

Seft. 2. There are some opinions, that burglary may be committed at any time after sun-set, and before sun-rising; but it seems the much better opinion, that the word "*noctanter*," which is precisely necessary in every indictment for this offence, cannot be satisfied in a legal sense, if it appear upon the evidence, that there was so much day-light at the time, that a man's countenance might be discerned thereby.

Comm. 224.

As to THE SECOND POINT, *viz.* Whether there must be both an *entry* and a *breaking*.

Dyer 99.
S. P. C. 30.
3. Inst. 64.
1. Hale 551.
556.
Con. Dalt. c.
151.
Crom. 31.
Dalison 22.
Pult. 132.
Folk. 108.

Seft. 3. Notwithstanding some loose opinions to the contrary, there seems to be no good cause to doubt, but that both are required to compleat this offence; for the words "*fregit*" and "*intravit*" being both of them precisely necessary in the indictment, both must be satisfied: and *a fortiori*, therefore, there can be no burglary, where there is neither of them; as if on a bare assault upon a house the owner sling out his money.

As to THE THIRD POINT, *viz.* What *breaking* is sufficient.

3. Inst. 64.
1. Hale 508.
527. 551.
Kelynge 67.
Hutton 20.
C. Car. 65.
225.
Dyer 99.

Seft. 4. It seems agreed, that such a breaking as is implied by law in every unlawful entry on the possession of another, whether it lie open or be inclosed, and will maintain a common indictment, or action of trespass *quare clausum fregit*, will not satisfy the words *felonice et burglariter fregit*, except in some special cases, in which it is accompanied with such circumstances as make it as heinous as an actual breaking.

2. Hale 558.
1. And. 114,
115.
Savil 59.
Foster 107.

Seft. 5. And from hence it follows, that if one enter into a house by a door which he finds open, or through a hole which was made there before, and steal goods, &c. or draw any thing out of a house through a door or window which were open before, or enter into a house by the doors open in the day-time, and lie there till night, and then rob and go away, without breaking any part of the house, he is not guilty of burglary.

Foster 107.

Seft. 6. But it is certain, that he would have been guilty thereof if he had opened the window, or unlocked the

the door, or broke a hole in the wall, and then entered, &c. or if having entered by a door which he found open, or having lain in the house by the owner's consent, he had but unlatched a chamber door, or if he had come down by the chimney (in which case though it might be said, that the house was open there, and so not actually broken, yet it was as much inclosed as the nature of the thing would bear).

Sec. 7. And according to some opinions, he would have been in like manner guilty, if upon an assault made by him upon the house, with an intent to rob it, the owner had opened the door in order to drive him off, and thereupon he had entered; in which case, as some say, the opening of the door by the owner, being occasioned by the felonious attempt of the other, is as much imputable to him as if it had been actually done by his own hands.

Crom. 32.
Cor tra, 1. Anderson 115.

Sec. 8. And it has also been resolved, that where divers persons came to a house with an intent to rob it, and knocked at the door, pretending to have business with the owner, and being by that means let in, rifled the house, they were guilty of burglary. (a)

(a) Le Morts' Case related by Wild to Kelynge 42.

Sec. 9. Also it hath been adjudged, that those were no less guilty, who, having a design to rob a house, took lodgings in it, and then fell on the landlord and robbed him; for the law will not endure to have its justice defrauded by such evasions.

Kely. 52, 52a. 63.

Sec. 10. And for the like reason, *à fortiori*, it has been resolved, that where persons, intending to rob a house, raised a HUE AND CRY, and prevailed with the constable to make a search in the house, and having got in by that means, with the owner's consent, bound the constable, and robbed the inhabitants, they were guilty of burglary. For there cannot be a greater affront to public justice, than to make use of legal process as a stale for such villainous purposes; and therefore the whole act is esteemed tortious *ab initio*.

Crom. 32.
Dalt. c. 151.
1. Hale 552.
3. Inst. 64.
4. Comm. 225.

AS TO THE FOURTH POINT, *viz.* What entry is sufficient to this purpose.

Sec. 11. It seems agreed, that any the least entry, either with the whole or with but part of the body, or with any instrument, or weapon, will satisfy the word "*intravit*" in

Dalt. c. 151.
Kelynge 67.
Pulton 132.
1. And. 115.

1. Hale 553-555. Crom. 31, 32. 4. Comm. 245.

(a) See the
Case of Geo.
Gibbons in
point, Foster
108.

an indictment of burglary; as if one do but put his foot over a threshold, or his hand, (a) or a hook or pistol within a window, or turn the key of a door which is locked on the inside, or discharge a loaded gun into a house, &c.

Case of John
Hughes, Cases
C. L. 313.

† *Sect. 12.* But it seems, that the instrument must be introduced for the purpose of committing the felony. Therefore, where thieves, having bored a hole *through* the door with a *center bit*, and part of the chips were found in the inside of the house, yet as they had neither got in themselves, nor introduced a hand or instrument for the purpose of taking the property, the entering was ruled incomplete.

1. Hale 439.
555.
Fost. 350-353.
Kely. 111.
Crom. 32.

Sect. 13. It is certain, however, that in some cases one may be guilty of burglary, who never made any actual entry at all; as where divers come to commit a burglary together, and some stand to watch in adjacent places, and the others enter, and rob, &c; for in all such cases, the act of one is in judgment of law the act of all.

Dalton 151.
1. Hale 555.
(b) Stra. 881.
10. St. Tr.
433.

Sect. 14. And upon the like ground it has been deliberately determined (b) upon a special verdict, that a servant who confederating with a rogue lets him in to rob a house, &c. is guilty of burglary as much as the rogue himself; for it is clear, that if the servant were out of the house, the entry of the other would be adjudged to be his also; and what difference is there when he is in the house?

Sect. 15. It is recited by 12. Ann. c. 7. "That there had been some doubt, whether the entering into a mansion-house, without breaking the same, with an intent to commit some felony, and breaking the said house in the night-time to get out, were burglary;" and thereupon it is declared and enacted, "That if any person shall enter into the mansion or dwelling-house of another by day or by night, without breaking the same, with an intent to commit felony, or being in such a house shall commit any felony, and shall in the night-time break the said house to get out of the same, such person is, and shall be taken to be guilty of burglary, and ousted of the benefit of clergy, in the same manner as if such person had broken and entered the said house in the night-time, with an intent to commit felony there."

As to THE FIFTH POINT, viz. In what *place* this offence may be committed.

Sett. 16. It seems to be the current opinion at this day, that it can be committed only in a *dwelling-house*; and that the indictment for it must necessarily alledge the fact in *domo mansionali*.

1. Hale 550.
4. Co. 40.
3. Inst. 64. 67.
B. Cor. 93.
22. Ass. 39.
95.
Kelynge 27.

Dalt. 151. 27. Ass. 38. Fost. 38, 39. 1. And. 302. S. P. C. 30. Popham 42. Prin. P. L. 274

Sett. 17. And Sir Edward Coke seems to say, that the breaking a church, &c. is therefore burglary, because the church is the mansion-house of GOD. But I can find nothing in the more ancient authors to countenance this nicety; for the general tenor of the old books seems to be, that burglary may be committed in breaking houses, or churches, or the walls or gates of a town. And Staundforde and Anderson mention precedents of indictments of burglary in *dome* without adding *mansionali*. However the constant course of late precedents and opinions makes it certainly a very dangerous, if not an incurable fault, to omit the word *mansionali* in an indictment of burglary in a house; and therefore, without question, it ought always to be inserted where the truth of the case will bear it. But surely it cannot be necessary or proper to have any such word in an indictment of burglary in a church, which, by all the books above cited, seems to be taken as a distinct burglary from that in a house.

Sett. 18. However it is agreed by all, that a house wherein a man dwells but for part of the year (a), or a house which one has hired to live in, and brought part of his goods into, but has not yet lodged in, or a chamber in one of the inns of court wherein a person usually lodges, or house which a man's wife hires without his privity, and lives in by herself without him, may be called his dwelling-house; and will sufficiently satisfy the words *domus mansionalis* in the indictment, whether any person were actually therein, or not, at the time of the offence.

(a) See the Case of John Nutbrown in point, Foster 76.

1. Hale 556.
Crom. 33.
Dalt. c. 151.
Moor 660.
4. Coke 40.
2. Jones 394.
Kely. 43. 46.

Pop. 42. 52. Pulton 132.

† *Sett.* 19. But it has been held, that burglary cannot be committed in a house under repair, although part of the property of its owner be there deposited; for until he take possession with intent to inhabit, it is not his mansion or dwelling-house.

Lyon's Case, Cases C. L. 169.

Fuller's Case,
Cafes C. L.
169, *notis.*

† *Señ. 20.* So also it hath been ruled, that burglary cannot be committed in an unfinished house, if neither the owner nor his servants have taken possession of it, although one of the workmen of the owner sleep therein for the purpose of protecting it.

3. Institute 64.
Dalt. c. 151.
B. Cor. 180.
Crompton 32.
1. Hale 558.
Kely. 27. 52.
82.

Señ. 21. But all out-buildings, as barns, stables, dairy-houses, &c. adjoining to a house, are looked upon as part thereof, and consequently burglary may be committed in them.

4. Com. 245.

Señ. 22. But if they be removed at any distance from the house, it seems, that it has not been usual of late to proceed against offences therein as burglaries.

Rex v. Gar-
land, Assizes
for Somerset,
1776, on a case
referred by
EYRE Baron.

† *Señ. 23.* And therefore it has been decided, that an *out-house* occupied by the prosecutor with his dwelling-house, but separated therefrom by an open passage eight feet wide, and not connected with the dwelling-house, by any fence inclosing both the said out-house and dwelling-house, is not a place in which a burglary can be committed.

Cattle's Case,
1. Hale 558.

† *Señ. 24.* But it has been held, that the breaking and entering in the night-time into a *bake-house* eight or nine yards distance from the dwelling-house, but connected with each other by means of a paling, is burglary.

Cafe of Gib-
son and o-
thers, Cafes
C. L. 287.

† *Señ. 25.* So also burglary may be committed in a *shop* adjoining to a house, if under the same roof, or within the curtilage, although there be no internal communication between the shop and the house, and although no person sleep in the shop.

1. Hale 556.
Con. Kely. 83.
Crom. 33.
Dalt. c. 151.
3. Inst. 65
Co. Lit. 48.

Señ. 26. If several persons *dwell* in one house, as servants, guests, tenants at will, or otherwise, having no fixed and certain interest in any part thereof, and a burglary be committed in any of their apartments, it seems clear, that the indictment shall lay the offence in the mansion-house of the proprietor, &c.

Señ. 27. But if one *hire* a distinct apartment in a house for his *lodging* for a certain time, and a burglary be committed therein, I can see no good reason why the indictment may not lay the offence in *domo mansionali* of such lodger; for it seems to be agreed, that an indictment for a burglary committed in a chamber in one of the *inns* of court, may lay the offence in *domo mansionali* of the owner of the chamber; and why may not such an apartment, with

See Rex v.
Gansel,
Cowp. 4.

with as much propriety be called the mansion-house of him that takes it, during the time that he has a certain interest in it; for so long as it is severed by the lease, it seems in the eye of the law to be as distinct from the other parts of the house, as if the person who rents it had a freehold or inheritance in it. As to the objection, that he goes into the house by the same door with the other inhabitants, and therefore is but an inmate, and the whole ought to be considered but as one house, I answer, that he must have some way to his apartment as incident to his interest in it, and that such way lying through a door which is common to him with others, doth not make the apartment itself in any respect less his own, than a way through a door belonging to himself only would have done; and if the law be so in this case, it seems to me very reasonable also, that if such a lodger take also a cellar in the said house, a burglary committed in such cellar, may be alledged *in demo mansionali* of the lodger, whether the cellar had any communication with the house or not (a); for since it seems to be agreed, that a barn or stable, or other out-building near to a house, shall be looked on as part thereof, why should not such a cellar have the like estimation.

(a) Provided the owner does not dwell in any part of the house.
Sed quære, for Kel. 83. seems *contra*.

Sett. 28. However it is agreed by all, that if one hire a part of a house to lodge in, which is *actually divided from the rest*, and have a door of its own to the street, a burglary therein may be alledged *in demo mansionali* of such person.

† *Sett.* 29. It has therefore been decided, that when the owner of a house had let the whole of it in apartments to different persons, and did not inhabit any part of it himself; and one of the inmates rented a shop, a parlour, and a cellar underneath, at 12l. 10s. a year, which cellar the owner afterwards reserved to himself to keep lumber in, and deducted 10s. yearly from the 12l. 10s. for the rent of the same, the shop and parlour of such inmate, if feloniously broken open in the night-time, may be laid to be the dwelling-house of such inmate.

Rex v. Rogers, O. B. Oct. Session 1772. on a Case reserved for the opinion of the Judges.

† *Sett.* 30. So also where a house was situated in a mews, and the whole of it let out in lodgings to three families, with only one outer door which was common to all the inmates, one of whom rented the ground floor and a single room up one pair of stairs, and the door of the parlour was broke open in the night, it was determined that this parlour was well laid to be the dwelling-house of the particular inmate.

Trapshaw's Case, Cases C. L. 333.

Turner's
Case, Cases
Cro. L. 249.

+ *Sett.* 31. So also where a coachman lived in rooms situated over the coach-house and stables of a public mews, but never paid any rent, nor were the premises rated in the parish-books except as appurtenances to the coach-house and stables, the way to which was down a passage leading to a staircase which led to these rooms through a door which was never fastened, but there was a door at the top of the staircase to the rooms which was locked at night, it was held, that these rooms were such a dwelling-house in which burglary might be committed.

Richard Car-
roll's Case,
O. B. Febr.
Sess. 1782.
Cases Cro.
Law 205.

+ *Sett.* 32. So also where the inmate of a house so let had two apartments therein, *viz.* a sleeping room up one pair of stairs, and a working-shop in the garret, which he rented by the week as tenant at will, and a burglary was committed in the *work-shop*, it was determined that the burglary was well laid in the mansion-house of such inmate.

Hutton 33.
i. Hale 557,
558.
Vid. 13. Geo. 3.
c. 38. respect-
ing burglary
in the work-
shops of the

Sett. 33. But if he had taken it as a shop or work-house for his use in day-time only, it seems that a felony therein cannot be alledged in a mansion-house; not of him that lets it, because it is severed by the lease from that part of the house which belongs to him, nor of him to whom it is let, because he takes it not to lodge in.

Plate Glass Manufactory.

Jones' Case,
Cases C. L.
434.

+ *Sett.* 34. But if two partners in trade respectively live in adjoining houses, the shop underneath being common to both, and no internal communication between the two houses, but each of them having an outer door from the street, each house may be laid to be the dwelling-house of its respective inhabitant, although the rent and taxes are paid out of the joint funds.

22. Aff. 95.
B. Cor. 93.
S. P. C. 30.
Dalt. c. 151.
(a) But see
ante p. 289.

Sett. 35. From what has been said it clearly appears, that no burglary can be committed by breaking into any ground inclosed, or booth, or tent, &c. (a); for there seems to be no colour, from any authority ancient or modern, to make any offence burglary that is not done either against some house, or church, or the walls or gates of some town.

As to THE SIXTH POINT, *viz.* What degree of guilt is required in the principal intention of the offender.

Dyer 99.
3 Inst. 65.
Kely. 30. 67.
Crom. 32.
i. Hale 562.

Sett. 36. It seems clear, that there can be no burglary but where the indictment both expressly alledges, and the verdict also finds, an intention to commit some *felony*; for if it appear that the offender only meant to commit
a tres-

a trespass, as to beat the party, &c. he is not guilty of burglary.

† *Sett.* 37. And therefore where a servant embezzled money intrusted to his care, ten guineas of which he deposited in his trunk, and quitted his master's service, but afterwards returned, broke and entered the house in the night, and took away the ten guineas; it was adjudged no burglary, because it did not appear that he entered to commit a felony, but a trespass only. Rex v. Bingley, Q. B. Trin. 3. Jac. 2. MS.

Sett. 38. However it seems much the better opinion, that an intention to commit a rape, (a) or such other crime which is made felony by statute, and was a trespass only at common law, will make a man guilty of burglary, as much as if such offence were a felony at common law; because wherever a statute makes any offence felony, it incidentally gives it all the properties of a felony at common law. (a) Rex v. Gray, Strange 481. in point.

As to THE SEVENTH POINT, viz. In what manner burglary is deprived of the benefit of clergy.

† *Sett.* 39. By 18. Eliz. c. 7. "If any person or persons shall commit or do any manner of felonious burglary, he or they shall suffer death without benefit of clergy."

† *Sett.* 40. By 3. and 4. Will. and Mary, c. 9. "All and every person or persons that shall counsel, hire, or command any person to commit any burglary, shall not have the benefit of his or their clergy."

As to THE EIGHTH POINT, viz. Of the statutes which have been passed with a view to prevent this offence.

† *Sett.* 41. By 23. Hen. 8. c. 5. "If any person or persons be indicted for the death of any evil-disposed person or persons attempting burglariously to break mansion-houses in the night-time, the person or persons so indicted shall be thereof fully acquitted and discharged."

† *Sett.* 42. By 10. and 11. Will. 3. c. 23. "Whoever shall apprehend any person guilty of burglary shall have a certificate, exempting him from all parish and ward offices."

† *Sett.* 43. By 5. Ann. c. 31. "Whoever shall apprehend a burglar, and prosecute him to conviction, shall have

“ have a reward of *forty pounds*; and if an accomplice, being
 “ out of prison, shall convict two or more offenders, he is
 “ intitled to a pardon of all the offences enumerated in the
 “ act.”

† *Stat. 44.* By 10. Geo. 3. c. 48. “ Buyers and receivers
 “ of stolen jewels, gold or silver plate, watches, when the
 “ stealing shall have been accompanied with a burglary,
 “ shall be triable as well before the conviction of the prin-
 “ cipal, whether he shall be in or out of custody, as after,
 “ and transported for fourteen years.”

† *Stat. 45.* By 23. Geo. 3. c. 88. “ If any person shall
 “ be apprehended having upon him any picklock key, crow,
 “ jack, bit, or other implement, with an intent feloniously
 “ to break and enter into any dwelling-house, &c. he shall
 “ be deemed a rogue and vagabond within 17. Geo. 2. c. 5.”

CHAPTER THE THIRTY-NINTH.

O F

A R S O N.

ARSON is a felony at common law, in maliciously and voluntarily burning the house of another by night or by day.

And I shall consider,

1. What is such a house in which arson may be committed.

2. Whether this offence may be committed in the offender's own house.

3. How much the house ought to be burned.

4. With what degree of malice.

† 5. In what cases the benefit of clergy is taken from this offence.

As to THE FIRST POINT, *viz.* What is such a house in which arson may be committed.

Sec. 1. It seems agreed, that not only a mansion-house, and the principal parts thereof, but also any other house and the out-buildings, as barns and stables adjoining thereto, and also barns full of corn, whether they be adjoining to any house or not, are so far secured by law, that the malicious burning of them is arson. And it is said, that in an indictment they are well expressed by the word *domus*, without adding *mansionalis*,

Sec. 2. But it seems, that the burning of the frame of a house, or of a stack of corn, &c. is not accounted arson, because it cannot come under the word *domus*, which seems at present to be thought necessary in every indictment of arson.

1. Hale 568.
2. Inst. 67.
Britt. f. 16.
S. P. C. 36.
Dalt. c. 105.
1. Burn. 289

Sec. 3. Yet anciently the burning of a stack of corn was accounted arson; † and now by 9. Geo. 1. c. 22. it is arson to set fire to any “house, barn, out-house; or to “any hovel, cock, mow, or stack of corn, straw, hay, or “wood.”

Taylor's Case,
Cafes Cro.
Law 46.

† *Sec. 4.* But it has been determined, that a *paper-mill* is not an *out-house*, within the meaning of the statute.

Judd's Case,
Cafes Cro.
Law 381.

† *Sec. 5.* It has also been determined, that setting fire to a *parcel* of unthrashed wheat in the night, is not sufficiently descriptive of the offence of setting fire to “a “cock, mow, or stack of corn, &c.” to bring the offender within this statute.

Rex v. Dona-
van, Cafes
C. L. 64.
S. C. 2. Bk.
Rep. 682.

† *Sec. 6.* It has been determined, that the setting fire to an apartment of a common gaol of a county to which a dwelling-house for the keeper to live in adjoins, the entrance into the prison being through the dwelling-house, is arson, although a wall separates the prison from the house.

As to THE SECOND POINT, *viz.* Whether arson may be committed in the offender's own house.

Holme's Case,
1. Jones 351.
C. Car. 371.
Sed vide Fos-
ter 116.

Sec. 7. It seems clearly agreed, that one seized in fee, or but possessed for years, of a house standing by itself at a distance from all others, cannot commit felony in burning the same.

Rex v. Spal-
ding; Bury
Lent Attizes
1780, on a
case reserved,
Cafes Crown
Law 193.

† *Sec. 8.* It has also been decided, that a tenant in possession of a copyhold dwelling-house cannot be guilty of arson by burning the same, although he had a long time before surrendered it into the hands of the lord of the manor, to the use of another person, his heirs and assigns, for securing the payment of money borrowed; for while the tenant continues in possession, it is his own house.

Rex v. Breeme
Old Bailey,
April Session
1780, on a
case reserved,
Cafes Cro.
Law 195.

† *Sec. 9.* It has also been decided, upon the same reason, that a tenant in possession, under an agreement for a lease for three years, from a person who held under a building lease, is not guilty of arson by burning the house, for it is the injury to the possession which this law means to punish.

† *Sec.*

+ *Sett.* 10. It has also been decided, that a tenant from year to year, or from month to month, cannot be guilty of arson by burning the house of which he is so in possession. Pedley's Case,
Cassia Cro.
Law 209.
S. C. Cald.
218.

Sett. 11. Also it seems the much stronger opinion, that a man so seised or possessed of a house in a town, who burns his own with an intent to burn his neighbours, but in the event burns his own only, is not guilty of arson; for by the general tenor of the books speaking of this offence, it seems to be supposed to be done in the house of another, and not of the offender. 1. Hale 368,
569.
3. Inst. 67.
Dalt. c. 105.
Cro. Car. 338.

+ *Sett.* 12. It is however determined, that a widow intitled to dower, but no dower assigned, from a house, the equity of the redemption of which had descended from her husband to her infant children, and for whose benefit she had let it and received the rent, is guilty of arson by burning it in the possession of her tenant.—And it was said, that if she had been seised of the freehold, it would still have been felony; from whence it is contended, that a reversioner who shall maliciously fire the houses in possession of his tenants *under leases* from himself or his ancestors, will be guilty of arson. Harris' Case,
Foster 113 10
116.

+ *Sett.* 13. It has also been determined, that if a pauper admitted into a parish poor-house set fire to the room in which she with other paupers sleep, she is thereby guilty of arson; for this is the house of the parish.

+ *Sett.* 14. So also it has been determined to be arson in a prisoner confined for debt in a county gaol, to set fire to the little box which forms his apartment in the prison. Rex v. Donag
van, 2. Bl.
Rep. 682.

Sett. 15. So also, although no act which is only a crime in respect of the injury which it does, or may do, to another, be made felony by reason of an intention thereby to commit a felony, if such intention be not executed; yet if the house set fire to be in a town, this is certainly an offence highly punishable in regard of the malice thereof, and the great danger to the publick which attends it, and the offender may be severely fined, and imprisoned during the king's pleasure, and set on the pillory, and bound to his good behaviour during life. Kelynge 29.
Folt. 115, 116.

As to THE THIRD POINT, *viz.* How much of such house ought to be burnt.

Sett. 16. It seems to be clearly agreed, that neither a bare intention to burn a house, nor even an actual attempt to do it by putting fire to part of a house, will amount to felony, if no part of it be burnt; for the indictment must have the words *incendit et combussit*.

Sett. 17. But it is certain, that if any part of the house be burnt, the offender is guilty of felony, notwithstanding the fire afterwards be put out, or go out of itself.

8. Taylor's
Case, Cases
C. L. 46.

+ *Sett.* 18. And it must be the kind of house named in the indictment; and therefore where an indictment charged the defendant with having burned a certain *out-house* called a *paper-mill*, and it appeared that only a large quantity of paper which was drying in a loft annexed and belonging to the mill was set fire to, but that no part of the mill was set fire to or consumed, it was held insufficient.

As to THE FOURTH POINT, *viz.* With what degree of malice such house ought to be burnt.

Sett. 19. It seems clear, that if the fire happened through negligence (a) or mischance, it cannot make him who is the unfortunate cause of it guilty of arson; for the indictment must alledge the offence to have been done *voluntariè ex malitiâ suâ præcogitatâ et felonice*. Yet if one maliciously intending to burn only the house of A. happen thereby to burn the house of B. it is certain that he may be indicted as having maliciously burned the house of B. for where a felonious design against one man misses its aim, and takes effect upon another, it shall have the like construction as if it had been levelled against him who suffers by it.

(a) 1. Hale's 9.
3. Inst. 67.
Plow. 475.

As to THE FIFTH POINT, *viz.* In what cases arson is deprived of the benefit of clergy.

+ *Sett.* 20. By 23. Hen. 8. c. 1. "No person nor persons who shall be found guilty for wilful burning of any dwelling-houses, or barns wherein any grain of corn shall happen to be, or of any abetment, procurement, helping, maintaining, or counselling of or to any such felonies, shall be admitted to the benefit of his or their clergy."

+ *Sett.*

† *Stat.* 21. By 4. & 5. Philip and Mary, c. 4. it is enacted, " That all and every person and persons that shall
 " maliciously command, hire, or counsel any person or
 " persons wilfully to burn any dwelling-house, or any part
 " thereof, or any barn then having corn or grain in the same,
 " shall not have the benefit of his or their clergy."

† *Stat.* 22. By 9. Geo. 1. c. 22. " If any person or
 " persons shall set fire to any house, barn, or out-house, or
 " to any hovel, cock, mow, or stack of corn, straw, hay,
 " or wood ; or shall forcibly rescue any person, being
 " lawfully in custody of any officer, or other person, for any
 " of the offences aforesaid ; or if any person or persons
 " shall by gift or promise of money or other reward procure
 " any of his majesty's subjects to join him or them in any
 " such unlawful act, every such person so offending shall
 " suffer death without benefit of clergy."

† *Stat.* 23. It seems therefore that accessaries after the 1. Hale 523.
 offence are still entitled to the benefit of clergy.

CHAPTER THE FORTIETH.

O F

FELONIES BY STATUTE.

OFFENCES made capital by statute, and not reduced to any of the preceding heads, are such as relate,

FIRST, To Women; by,

1. Rape;
2. Forcible marriage;
3. Seduction.

SECONDLY, To Marriage; by,

1. Clandestine marriage.
2. Bigamy.

THIRDLY, To Breach of Trust; by larceny,

1. From lodgings;
2. By menial servants;
3. By Bank clerks;
4. By clerks in the post-office.

FOURTHLY, Stealing *choses in action*, or

Securities for money.

FIFTHLY, To freehold property; namely,

1. Orchards.
2. Trees;
3. Shrubs and plants;
4. Vegetables;

4. Vegetables ;
5. Madder roots ;
6. Lead-mines ;
7. Lead, iron, copper, brass, or bell-metal fixtures.

SIXTHLY, To animals ; namely,

1. Rabbits ;
2. Deer ;
3. Fish.

SEVENTHLY, To public justice ; by,

1. Altering records ;
2. Personating bail ;
3. Durefs in gaolers ;
4. Returning from transportation ;
5. Taking reward to restore, and,
6. Advertising reward for restoration of, stolen goods ;
7. Buying stolen goods ;
8. Rescuing the body of an executed murderer ;
9. Incorrigible rogues ;
10. Persons convicted of perjury escaping.

EIGHTHLY, To the public revenue ; in,

1. Owling ;
2. Smuggling ;

3. Fraudulent permits ;

4. Transposing stamps.

NINTHLY, To public trade ; by,

1. Fraudulent bankruptcy ;

2. Insolvent debtors ;

3. Slaughtering-houses.

TENTHLY, To the public funds ; by

Personating a proprietor.

ELEVENTHLY, To public credit ; by forging,

1. Franks ;

2. Testimonial of justices ;

3. Lottery tickets ;

4. Post fines ;

5. Marriage register ;

6. Stamps ;

7. Hand of Accountant general ;

8. Seal of the South Sea Company ;

9. East India Company's bonds, &c. ;

10. The name of a proprietor of Stock ;

11. Documents relating to the Admiralty ;

12. Names of seamen ;

13. Names of seamen on board privateers ;

14. Names of Greenwich pensioners ;

15. Policies of insurance ;

16. Bank of England notes, &c. ;

17. Instruments ;

17. Instruments for payment of money ;

18. Orders for delivery of goods.

TWELFTHLY, To the public health; by,

1. Spreading the plague ;

2. Neglecting quarantine.

THIRTEENTHLY, To the public peace, by

1. Riot ;

2. Threatening letters ;

3. Mobs trooping ;

4. Hunting ;

5. Pulling down turnpikes ;

6. Destroying fences ;

7. Injuring bridges ;

8. Destroying banks and flood-gates.

FOURTEENTHLY, To malicious mischief; by,

1. Maiming cattle ;

2. Burning ;

3. Destroying mills, and

4. Garments ;

5. Cutting hop binds ;

6. Injuring collieries ;

7. Breaking looms ;

8. Destroying granaries, and

9. Knitting frames.

FIFTEENTHLY,

FIFTEENTHLY, To the persons of individuals; by,

1. Maims ;
2. Shooting at another ;
3. Assaulting with intent to rob.

SIXTEENTHLY, To ships and boats; by,

1. Destroying ships ;
2. Surcharging boats ;
3. Plundering wrecks.

SEVENTEENTHLY, To sailors and soldiers ; by,

1. Personating seamen ;
2. Wandering as sailors ;
3. Desertion.

EIGHTEENTHLY, To purveyance.

SECT. 1. But before I proceed to treat of each crime in particular, I shall endeavour to shew,

1. Where an offence shall be said to be made felony by statute.
2. What is incidentally implied in every such statute.

As to THE FIRST POINT, viz. Where an offence shall be said to be made felony by statute.

SECT. 2. It seems clear, that not only those crimes which are made felonies in express words, but also all those which are decreed to have or undergo judgment of life and member by any statute become felonies thereby, whether the word "felony" were omitted or mentioned.

1. Hale 627.
641. 703.
B. Cor. 204.
3. Inst. 91.
2. Inst. 434.
Co. Lit. 391.
Hobart 293.

SECT. 3. But an offence shall never be made felony by the construction of any doubtful and ambiguous words of a statute; and therefore, if it be only prohibited under "pain of forfeiting all that a man has," or of "forfeiting body and goods,"

Co. Lit. 391.
Hob. 270. 293.
3. Inst. 146.

goods," or of being "at the king's will for body, land, and goods," it shall amount to no more than a high misdemeanor, punishable by imprisonment, &c.

1. Hale 324.
685. 570.
2. Bullst. 349.
Pyer 323.
3. Leon. 295.
SecT. 4. Also where a statute makes a second offence felony, or subject to a heavier punishment than the first, it is always implied, that such second offence ought to be committed after a conviction for the first; from whence it follows, that if it be not so laid in the indictment, it shall be punished but as the first offence; for the gentler method shall first be tried, which perhaps may prove effectual.

Rex v. Davis,
Cases in Cro.
Law 228.
+ *SecT. 5.* But if a statute make the doing of an act *felonious*, and a subsequent statute make it *penal* only, the latter statute is considered as a virtual repeal of the former, so far as relates to the punishment of the offence.

3. Inst. 73.
+ *SecT. 6.* If a statute create a felony and say, that the offender shall *suffer death*, yet he shall, in such case, have the benefit of clergy; for this being a privilege allowed by the common law, cannot be taken away without express words.

As to THE SECOND POINT, *viz.* What is incidentally implied in every statute making an offence felony.

3. Inst. 47.
59. 90.
Crompt. 42.
Dailt. 11. 22.
Salk. 542.
SecT. 7. It seems clear, that every such statute does, by necessary consequence, subject the offender to the like attainder and forfeiture, &c. and also does require the like construction as to those who shall be accounted accessaries before or after, and to all other intents and purposes, as is incidental to a felony at common law.

3. Inst. 47.
1. Hale 723.
SecT. 8. Yet where such a statute saves the corruption of blood, it impliedly saves the descent of the land of the offender to his heir: also where it saves the land to the heir, it prevents the corruption of blood so far: and it is said, that in both cases it saves the wife's dower, because wherever an heir takes as heir, he shall not avoid a title of dower, in respect of the same inheritance; but notwithstanding such a saving, the land shall be forfeited for the life of the offender.

1. Hale 572.
2. Hale 722.
SecT. 9. It is said, that mis-prison of felony is as well incidental to a felony created by statute as to one at common law.

Bro. Abr.
Cor. 233.
SecT. 10. If one commit an offence which is made felony by statute, and then the statute be repealed, he cannot be punished as a felon in respect of that statute.

CHAPTER THE FORTY-FIRST.

O F

R A P E.

OFFENCES relating to women made felonies by statute are of three kinds :

1. Rape.
2. Forcible marriage.
3. Seduction.

In treating of RAPE I shall consider,

1. What shall be called RAPE.
2. What evidence is necessary.
3. How it may be punished.

As to THE FIRST POINT, *viz.* What shall be called rape.

Sect. 2. It seems, that rape is an offence in having unlawful and carnal knowledge of a woman by force and against her will.

Sect. 3. But it is said, that no assault upon a woman in order to ravish her, however shameless and outrageous it may be, if it proceed not to some degree of penetration, and also of emission, can amount to a rape.

Sect. 4. It was a question before 18. Eliz. c. 7. Whether a rape could be committed on a child of the age of six or seven years ; but by that statute, “ Whosoever shall
 X 2 “ un- Dyer 304.
 1. Hale 30.
 Dalt. c. 107.
 1. Hale 30.
 Crom. 100.

“ unlawfully and carnally know and abuse any woman-
 “ child under the age of ten years, shall suffer as a felon
 “ without clergy.”

Vide Cro. Cir. *Sec. 5.* Upon an indictment for this offence, it is no
 Com. c. 456. way material whether such child consented, or were forced ;
 3. Bur. 1696. yet it must be proved, that the offender entered into her
 C. Car. 332. body, &c.

As to THE SECOND POINT, *viz.* What evidence is ne-
 cessary.

Dalt. c. 105. *Sec. 6.* Offences of this nature are not any way miti-
 607. gated by shewing that the woman at last yielded to the
 B. Par. 55. violence, if such her consent was forced by fear of death, or
 5. Edw. 4. 6. of duress.

1. Rush. Col. *Sec. 7.* Nor is it any excuse, that she consented after the
 par. 2. 100. fact, or that she was a common strumpet ; for she is still un-
 Braet. 147, der the protection of the law, and may not be forced. But
 148. it was anciently said to be no rape to force a man's own
 concubine.

Sec. 8. Also it hath been said by some to be no rape to
 S. P. C. 24. force a woman who conceives at the time ; for it is said,
 Finch 204. that if she had not consented, she could not have conceived :
 1. Hale 628. but this opinion seems very questionable, not only because
 731. the previous violence is no way extenuated by such a subse-
 quent consent, but also because, if it were necessary to shew
 that the woman did not conceive, the offender could not be
 tried till such time as it might appear whether she did or not,
 and likewise because the philosophy of this notion may very
 well be doubted of.

Pulton 134. *Sec. 9.* It is a strong, but not a conclusive presumption
 1. Hale 630. against a woman, that she made no complaint in a reasona-
 633. ble time after the fact.
 Rush. Coll.
 part 2. 100.

As to THE THIRD POINT, *viz.* How rape may be pu-
 nished.

B. 2. c. 29. *Sec. 10.* All who are present and actually assist a man
 f. 7. 89. to commit a rape, may be indicted as principal offenders,
 Dalt. c. 107. whether they be men or women.
 Hutt. 115.
 St. Tr. 1. 366. Rush. v. 2. p. 93. Vide Lord Baltimore's Case, 4. Burr. 2179.

Sec. 11. It is said, that of old time it was felony; and consequently punishable with death, especially if the party ravished were a virgin, unless such virgin would accept of the offender for her husband, in which case she might save his life by marrying him. But afterwards it was looked upon as a great misdemeanor only, but not felony; and the offender was punished with the loss of his eyes and testicles: And by the statute of *Westminster* 1. c. 13. it was reduced to a trespass, subjecting the offender to two years imprisonment, and a fine at the king's will. But the smallness of the punishment proving a great encouragement to the offence, it was made felony again, by the statute of *Westminster* 2. c. 34. and by 18. *Eliz.* c. 7. it is excluded from the benefit of clergy.

1. Hale 627.
 Bract. 147.
 148.
 S. P. C. 21;
 22, 23.
 2. Inst. 181.
 Dalt. c. 99.
 Crom. 32.
 con.
 Co. Litt. 123.
 Fleta 1. c. 40.
 2. Inst. 180.
 Quære F. Utl.
 49.
 B. Cor. 169.

CHAPTER THE FORTY-FIRST

CONTINUED.

O F

FORCIBLE MARRIAGE.

BY 3. Hen. 7. c. 2. IT IS RECITED, "That women, as well maidens as widows and wives, having substances, some in goods moveable, and some in lands and tenements, and some being heirs apparent unto their ancestors, have, for the lucre of such substances, been oftentimes taken by misdoers contrary to their will, and after married to such misdoers, or to others by their assent, or defiled, to the great displeasure of God, and contrary to the king's laws, and disparagements of the said women, and utter heaviness and discomfort of their friends, and to the evil example of all others;" AND ENACTED, "That what person or persons that taketh any woman *so* against her will unlawfully, that is to say, maid, widow, or wife, that such taking, procuring, and abetting to the same, and also receiving wittingly the same woman so taken against her will, and knowing the same, be felony, and that such misdoers, takers, and procurators to the same, and receivers knowing the said offence in form aforesaid, be reputed and judged as principal felons."

† *Secd.* 2. But by 3. Hen. 7. c. 2. f. 1. it is provided. "That this act shall not extend to any person taking any woman only claiming her as his *ward* or bond woman."

† *Secd.* 3. By 39. Eliz. c. 9. "All and every person and persons as shall be convicted or attainted of or for any offence made felony by the said act 3. Hen. 7. c. 2. shall lose his and their benefit of clergy: provided always that this act shall not extend to take away clergy, but only from such person and persons as shall be principals or procurers, or accessaries before such offence committed."

In the construction of the 3. Hen. 7. c. 2. the following points have been resolved.

Secd. 4. FIRST, That the indictment must expressly set forth, both that the woman taken away had land or goods, or

1. Hale 667,
661. and 5 Et.
Tr. 468.

or was heir apparent, and also that she was married or defiled, because no other case is within the preamble of the statute to which the enacting clause clearly refers; for it does not say, that "what person, &c. that taketh any woman against her will." but "what person that taketh any woman *so* against her will."

Far. 101, 102.
Hobart 152.
C. Car. 483.
485, 488, 492.
Dalt. 72.
1. And. 115.
3. Inst. 61.
Savil 57.
12. Co. 25, 105, 110.

SECT. 5. SECONDLY, That the indictment ought also to allege that the taking was *for lucre*, because the words of the preamble are *so*.

H. bart 182.

SECT. 6. But it need not set forth, that it was *with an intention* to marry or defile the party, because the words of the statute neither require such an intention, nor does the want thereof any way lessen the injury.

C. Car. 485.
489.

SECT. 7. THIRDLY, That it is no manner of excuse, that the woman at first was taken away with her own consent, because if she afterwards refuse to continue with the offender, and be forced against her will, she may from that time as properly be said to be taken against her will, as if she had never given any consent at all; for till the force was put upon her, she was in her own power.

Hobart 182.
C. Car. 485.
1. Hale 660.

SECT. 8. FOURTHLY, That it is not material whether a woman *so* taken away be at last married, or defiled, with her own consent or not, if she were under the force at the time, because the offender is in both cases equally within the words of the statute, and shall not be construed to be out of the meaning of it, for having prevailed over the weakness of a woman, whom by *so* base means he got into his power.

Fulw. 93.
Case, C. Car. 493.
2. Vent. 243.
See also
Swinden's
Case, s. St.
Tr. 408.

SECT. 9. FIFTHLY, That those who after the fact receive the offender, but not the woman, are not principals within this statute, because the words are, "*receiving withing the same woman so taken, &c.*" but it seems clearly, that they are accessaries after the offence, according to the known rules of common law.

3. Inst. 61.
Dalt. 72.
S. P. C. 44.
Far. 154.

SECT. 10. SIXTHLY, That those who are only privy to the marriage, but no way parties to the forcible taking away, or consenting thereto, are not within the statute.

C. Car. 482.

SECT. 11. SEVENTHLY, That where a woman is taken by force in the county of *A.* and married in the county of *B.* the offender may be indicted and found guilty in the county

C. Car. 488.
Hobart 153.
1. Hale 660.

county of *B.* because the continuing of the force there amounts to a forcible taking within the statute.

Fulwood's
Case, Cro.
Car. 484.

† *Sec. 12.* EIGHTHLY, That the woman thus taken away and married, may be sworn and give evidence against the offender who so took and married her, though she be his wife *de facto*; but it seems, that there ought to be concurring evidence to prove the whole fact.

1. Hale 661.

(a) 1. Hale
661.

† *Sec. 13.* NINTHLY, It is said (*a*) to be questionable, whether if a woman, thus forcibly married, freely without constraint live with him who thus marries her any considerable time, her examination may be read in evidence on the trial. But it has been since ruled, (*b*) upon debate, that a wife is a competent evidence for as well as against her husband, on the trial of an indictment on this statute, although she has cohabited with him from the day of her marriage.

(b) *Rex v. Perry*, Bristol
gaol-delivery
1794.

CHAPTER THE FORTY-FIRST

CONTINUED.

O F

S E D U C T I O N .

BY 4. and 5. Philip and Mary, c. 8. IT IS RECITED,
 “ That maidens and women children of noblemen, gentlemen and others, as well such as be heirs apparent to their ancestors, as others, having left unto them by their father, or other ancestor and friends, lands, tenements, and hereditaments, or other great substances in goods and chattels moveable, for and to the intent to advance them in marriage, somewhat like according to their degrees, and as might be moſt for their ſurety and comfort, as well for themſelves as of all other their friends and kinsfolks, be oftentimes unawares to their ſaid friends or kinsfolks, by flattery, trifling gifts, and fair promiſes, of many unthrifty and light perſonages, and thereto by the intreaty of perſons of lewd demeanour, and others that for rewards buy and ſell the ſaid maidens and children, ſecretly allured and won to contract matrimony with the ſaid unthrifty and light perſonages, and thereupon either with flight or force oftentimes be taken and conveyed away from their ſaid parents, friends, or kinsfolks, to the high diſpleaſure of Almighty God, diſparagement of the ſaid children, and the extreme continual heavineſs of all their friends ; which ungodly dealing, for lack of wholeſome laws to the redreſs thereof, remaineth a great, familiar, and common miſchief in this our commonwealth :” it is therefore ENACTED, “ That
 “ it ſhall not be lawful to any perſon and perſons to take or convey away, or cauſe to be taken or conveyed away,
 “ any maid or woman child unmarried, being under the
 “ age of ſixteen years, out of or from the poſſeſſion, cuſ-
 “ tody or governance, and againſt the will of the father
 “ of ſuch maid or woman child, or of ſuch perſon or
 “ perſons to whom the father of ſuch maid or woman
 “ child, by his laſt will and teſtament, or by any other act
 “ in his life-time, hath or ſhall appoint, aſſign, bequeath,
 “ give or grant the order, keeping, education or governance
 “ of ſuch maid or woman child, except ſuch taking and
 “ conveying away as ſhall be had made or done by or for
 “ ſuch

Puniſhment
 of ſuch as
 take away
 maidens. &c.
 within ſixteen
 years of age,
 &c.

3. H. 7. c. 2.

3. Mod. 163,
 169.

4. Mod. 145.

“ person or persons, as without fraud or covin be or then
 “ shall be the master or mistress of such maid or woman
 “ child, or the guardian in socage, or guardian in chivalry,
 “ of or to such maid or woman child.”

The penalty
 for taking a
 maid under
 sixteen years
 of age.

† *Stat. 2.* By 4. and 5. Philip and Mary, c. 8. s. 3.
 it is further enacted, “ That if any person or persons above
 “ the age of fourteen years shall unlawfully take or convey, or
 “ cause to be taken or conveyed, any maid or woman child
 “ unmarried, being within the age of sixteen years, out
 “ of or from the possession and against the will of the fa-
 “ ther or mother of such child, or out of or from the
 “ possession and against the will of such person or persons
 “ as then shall happen to have, by any lawful ways or
 “ means, the order, keeping, education, or governance of any
 “ such maiden or woman child; that then every such
 “ person and persons so offending, being thereof lawfully
 “ attainted or convicted by the order and due course of
 “ the laws of this realm, (other than such of whom such
 “ person taken away shall hold any lands or tenements
 “ by knight’s service,) shall have and suffer imprisonment of
 “ his or their bodies, by the space of two whole years, without
 “ bail or mainprise, or else shall pay such fine for his or
 “ their said offence, as shall be assessed by the council of
 “ the queen’s highness, her heirs or successors, in the star-
 “ chamber at *Westminster*.”

2. Mod. 128.

The penalty
 for taking a-
 way, deflow-
 ering or con-
 tracting ma-
 trimony with
 a woman un-
 der sixteen
 years of age.

† *Stat. 3.* By 4. and 5. Philip and Mary, c. 8. s. 4.
 it is further enacted, “ That if any person or per-
 “ sons shall so take away, or cause to be taken
 “ away, as is aforesaid, and deflower any such maid
 “ or woman child, as is aforesaid, or shall against the
 “ will, or unknowing of or to the father of any such
 “ maid or woman child, if the father be in life, or against
 “ the will, or unknowing of the mother of any such maid
 “ or woman child (having the custody or governance of
 “ such child, if the father be dead) by secret letters, mes-
 “ sages, or otherwise, contract matrimony with any such
 “ maiden or woman child, except such contracts of matri-
 “ mony as shall be made by the consent of such person
 “ or persons as by the title of wardship shall then have or
 “ be intitled to have the marriage of such maid or woman
 “ child, that then every such person or persons so offending,
 “ being thereof lawfully convicted, as is aforesaid, shall
 “ suffer imprisonment of his or their bodies, by the space
 “ of five years, without bail or mainprise, or else shall
 “ pay such fine for his or their said offence, as shall be as-
 “ sessed by the said council in the said star-chamber; the
 “ one

“ one moiety of all which forfeitures and fines shall be
 “ to the king and queen’s majesties, her heirs and successors,
 “ the other moiety to the parties grieved.”

† *Sec. 4.* By 4. and 5. Philip and Mary, c. 8. s. 5. it is Who may further enacted, “ That the king and queen’s highness hear and de-
 “ honourable council of the star-chamber, by bill of com- termine the
 “ plaint or information, and justices of assize, by inquisi- offences afore-
 “ tion or indictment, shall have authority by virtue of this said.
 “ act to hear and determine the said offences; upon every Cro. Car. 465.
 “ which indictment and inquisition, such process shall be
 “ awarded and lie, as upon an indictment of trespass at the
 “ common law.”

† *Sec. 5.* By 4. and 5. Philip and Mary, c. 8. s. 6. it The forfei-
 is further enacted, “ That if any woman child or maiden, ture of a wo-
 “ being above the age of twelve years, and under the age of man consent-
 “ sixteen years, do at any time consent or agree to such per- ing to an un-
 “ son that so shall make any contract of matrimony, con- lawful con-
 “ trary to the form and effect of this statute, that then the 3. Mod. 84.
 “ next of the kin of the same woman child or maid, to
 “ whom the inheritance should descend, return or come, af-
 “ ter the decease of the same woman child and maid, shall
 “ from the time of such assent and agreement have, hold
 “ and enjoy, all such lands, tenements and hereditaments,
 “ as the same woman child and maiden had in possession,
 “ reversion or remainder, at the time of such consent and
 “ agreement, during the life of such person that shall so
 “ contract matrimony: And after the decease of such per-
 “ son so contracting matrimony, that then the said lands,
 “ tenements and hereditaments, shall descend, revert, re-
 “ main, and come to such person or persons as they
 “ should have done in case this act had never been had
 “ or made, other than to him only that so shall contract
 “ matrimony.”

† *Sec. 6.* By 4. and 5. Philip and Mary, c. 8. s. 7. Pro- Orders for
 vided always, “ That this act, nor any thing therein con- orphans:
 “ tained, shall extend to take away or diminish any liberty,
 “ custom or authority, touching or concerning any or-
 “ phan or orphans, which now be or hereafter shall be
 “ within the city of London, or any other city, borough
 “ or town, where orphans are commonly used to be pro-
 “ vided for, either by grant or by custom; but that the
 “ lord mayor of the said city of London, and the aldermen
 “ of the same for the time being, and all and every other
 “ head officer or officers of any other city, borough or
 “ town, where such orphans be provided for, shall and may
 “ have

“ have and take like rule, order, keeping and charge of such
 “ orphan and orphans, and of all their lands, tenements,
 “ goods and chattels, as heretofore they or any of them law-
 “ fully had or used, or lawfully might have had and used,
 “ if this had not been made.”

Upon this statute the following points have been holden.

Rex v. Moor, 2. Lev. 179. S. C. 3. Keb. 708. 715. S. C. 2. Mod. 129. † *Sec. 7.* FIRST, It is settled, that although the above statute gives authority only to the star-chamber and justices of assize to hear and determine the offence mentioned, yet that information or indictment will lie thereon in the court of king's bench, for there are no negative words, and therefore the jurisdiction of that court is not excluded.

Rex v. Twifleton, 1. Sid. 387. S. P. *Rex v. Thorp*, 5. Mod. 221. † *Sec. 8.* It seems also, that an information by the master of the crown office will lie for this offence as at common law, for that the above statute does not create any new offence, but only aggravates the punishment.

Rex v. Moor, 2. Lev. 179. S. P. *Rex v. Boyal*, 2. Bur. 832. † *Sec. 9.* It seems also, that if the indictment or information state that the defendant “ being above the age of fourteen years took one A. then being a virgin unmarried, possessed of moveable goods and seised of lands of great value, out of the custody of her mother, &c.” the word *being* is a sufficient averment of the facts which follow.

Rex v. Twifleton and others, 1. Lev. 257. S. C. 1. Sid. 387. S. C. 2. Keb. 32. † *Sec. 10.* It seems also, that it is no legal excuse for this offence, that the defendant being related to the lady's father, and frequently invited to the house, made use of no other seduction than the common blandishments of a lover to induce the lady secretly to clope and marry him, if it appear that the father intended to marry her to another person, and so the taking against his consent.

Hicks v. Gore, 3. Mod. 84. † *Sec. 11.* But where a widow fearing her daughter, a rich heiress, might be seduced into an improvident marriage, placed her under the care of a female friend, who sent for her son from abroad, and married him openly in the church and during canonical hours to the heiress before she had attained the age of sixteen, and without the consent of her mother who was her guardian, it was held to be no forfeiture of her estate; for in order to bring the offence within the statute, it must appear that some artifice was used; that the elopement was secret; and the marriage to the disparagement of the family.

† *Sec.*

† *Sec7.* 12. It is agreed however, that the forfeiture extends as well to the infant who consents as to the husband who takes. 1. Brown Cases in Chancery.

† *Sec7.* 13. It is said, that there must be a continued refusal of the parent or guardian, for that if they once agree, though they afterwards dissent, it is an assent within the statute. Calthorpe v. Axtell, 3. Mod. 169.

† *Sec7.* 14. It has also been decided, that an information will lie for taking away a *natural daughter* under sixteen years of age from the care and custody of her putative father, it being an offence within the statute 4. and 5. Philip and Mary, c. 8. f. 3. Rex v. Cornforth, 2. Stra. 1162. S.C. 1. Const's Poor Laws.

CHAPTER THE FORTY-SECOND.

OF

CLANDESTINE MARRIAGE.

OFFENCES relating to marriage made felonies by statute are,

1. Clandestine marriage.
2. Bigamy.

And FIRST, As to clandestine marriage.

Stat. i. By 26. Geo. 2. c. 33. “ If any person shall solemnize matrimony, except the parties are quakers or Jews, in any other place than a church or public chapel, where banns have been usually published, unless by special licence from *the archbishop of Canterbury*; or shall solemnize matrimony without publication of banns, unless licence of marriage be first had and obtained from some person or persons having authority to grant the same, he shall be guilty of felony, and transported for fourteen years, and the marriage be null and void. The prosecution to be within three years.”

† *Stat. 2.* And by 26. Geo. 2. c. 33. s. 16. it is further enacted, “ That if any person shall, with intent to elude the force of this act, knowingly and wilfully insert or cause to be inserted in the register book of such parish or chapelry as aforesaid, any false entry of any matter or thing relating to any marriage; or falsely make, alter, forge, or counterfeit any such entry in such register, or any such marriage licence; or shall wilfully destroy any register book of marriages, or any part of such register book, or shall cause the same to be done, or shall assist in so doing, or shall knowingly utter or publish the same as true respectively, every person so offending shall suffer death without clergy.”

Upon

Upon this statute the following points have been resolved.

Dougl. 659. † *Sec. 3.* That all marriages celebrated in any church or chapel erected subsequent to the act were illegal, and the persons solemnizing the same liable to the penalties of the statute. But by 21. Geo. 3. c. 53. it is enacted, “ That
 Marriages solemnized before Aug. 1, 1781, in any church, &c. in England, erected since the recited act, valid. “ all marriages already solemnized, or to be solemnized before the first day of *August* one thousand seven hundred and eighty-one, in any church or public chapel, in that part of *Great Britain* called *England, Wales*, and the town of *Berwick upon Tweed*, erected since the making of the said act, and consecrated, shall be as good and valid in law as if such marriages had been solemnized in parish churches or public chapels having chapelries annexed, and wherein banns had been usually published before or at the time of passing the said recited act.”

Rex v. Hodnet, 1 Term Rep. 96. † *Sec. 4.* It has been determined, that the marrying of an illegitimate person without publication of banns or licence, is within the penalties of the statute, for that consent of father, guardian, or mother, is required in the case of an illegitimate child under age.

Bull. N. P. 123. † *Sec. 5.* It is said also, that as this statute requires all marriages to be performed in a church or chapel, and with licence or publication of banns, it does not extend to marriages in *Scotland*, or to marriages in foreign parts, or to any marriages among sectaries as *quakers, Jews*, &c.

CHAPTER THE FORTY-SECOND

CONTINUED.

O F

B I G A M Y.

BY 1. JAC. I. C. II. IT IS RECITED, "That divers evil disposed persons, being married, run out of one county into another, or into places where they are not known, and there become to be married, having another husband or wife living, to the great dishonour of God, and utter undoing of divers honest men's children, and others;" AND ENACTED, "That if any person or persons within his majesty's dominions of *England* and *Wales*, being married, or which hereafter shall marry, do marry any person or persons, the former husband or wife being alive; that then every such offence shall be felony, and the person and persons so offending shall suffer death as in cases of felony; and the party and parties so offending shall receive such and the like proceeding, trial, and execution, in such county where such person or persons shall be apprehended, as if the offence had been committed in such county where such person or persons shall be taken, or apprehended."

Felony to marry a second husband or wife, the former being living.

1. Ed. 6. c. 12. f. 16.

3. Inst. 88.

Cro. Eliz. 94.

Cro. Car. 461.

March 101.

Kely. 79, 80.

1. Hale's P.C. 692.

SECT. 2. By 1. JAC. I. C. II. f. 2. it is provided, "That this act, nor any thing therein contained, shall extend to any person or persons whose husband or wife shall be continually remaining beyond the seas by the space of seven years together, or whose husband or wife shall absent him or herself the one from the other by the space of seven years together, in any parts within his majesty's dominions, the one of them not knowing the other to be living within that time."

To what persons this statute shall not extend.

SECT. 3. By 1. JAC. I. C. II. f. 3. it is also provided, "That this act, nor any thing herein contained, shall extend to any person or persons that are or shall be at the time of such marriage divorced by any sentence had or hereafter to be had in the ecclesiastical court; or to any

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Y

person

" person or persons where the former marriage hath been
 " or hereafter shall be, by sentence in the ecclesiastical
 " court, declared to be void and of no effect; nor to any
 " person or persons for or by reason of any former marriage
 " had or made, or hereafter to be had or made, within age
 " of consent."

No corrup- Sect. 4. By 1. Jac. 1. c. 11. s. 4. it is also provided;
 tion of blood, " That no attainer for this offence, made felony by this
 loss of dower, " act, shall make or work any corruption of blood, loss of
 or inheritance. " dower, or disinherison of heir or heirs."

In the construction of this statute it has been holden :

1. Hale 692.
 3. Inst. 89.
 Kely. 27.
 C. Car. 461,
 462.

Sect. 5. FIRST, That not only those who are divorced
à vinculo matrimonii, but also those who are divorced only
à mensâ et thoro causâ adulterii or *sævitie*, are within the ex-
 ception in this statute, notwithstanding there be not the
 word "*divortiamus*," but only the word "*separamus*," in the
 sentence; because the statute, being penal, shall be construed
 favourably, and such separations are taken for divorces in
 common understanding.

3. Inst. 89
 1. R. Abr.
 340. 141.
 Co. Lit. 79.

Sect. 6. SECONDLY, Where either of the parties were
 within the age of consent at the time of the first marriage,
 that not only such person as was within such age, but also
 the other who was above it, is within the exception of the
 statute, because the power of disagreeing to such marriage
 is equal on both sides.

1. Hale 692.
 1. Sid. 171.
 Kely. 80.

Sect. 7. THIRDLY, That if the first marriage were be-
 yond sea, and the latter in *England*, the party may be in-
 dicted for it here, because it is the latter marriage that makes
 the offence; but if the first marriage were in *England*, and
 the latter beyond sea, it is said that the offender cannot be
 indicted here; *sed quære*, why not? for the words of the
 statute are, " That the parties so offending shall receive
 " such and the like proceeding, trial, and execution, in
 " such county where such person or persons shall be ap-
 " prehended, as if the offence had been committed in such
 " county where such person or persons shall be taken or
 " apprehended."

2. Hale 692.

O. R. Feb.
 Sess. 1786.

+ Sect. 8. FOURTHLY, That the first and true wife
 cannot be admitted to give evidence against her husband;
 and this rule has been so strictly taken, that even an affi-
 davit to postpone the trial, made by the first wife, has been
 rejected; but it is agreed, that the second woman is a com-
 petent

petent witness, even to prove the marriage, for she is not 1. Hale 693.
his wife so much as *de facto*.

+ Sect. 9. FIFTHLY, That on the trial of this offence, Morris v.
a marriage *in fact* must be proved, for that neither acknow- Miller,
ledgment, nor cohabitation, nor reputation, nor the pro- 4. Burr. 2059.
duction of articles between the parties for settling the estate
between them as man and wife, nor even the confession of
the parties, are sufficient to maintain an indictment on this
statute.

+ Sect. 10. SIXTHLY, That the evidence necessary to Morris v.
prove a marriage in fact is the production of the register, Miller,
pursuant to the statute 26. Geo. 2. c. 33. s. 14. or, if that 4. Burr. 2059.
be lost, or cannot be had, by the *vox vox* testimony of
some person who was present at the celebration of the
marriage.

+ Sect. 11. SEVENTHLY, That a sentence obtained in the Dukes of
spiritual court, in a suit of jactitation, does not preclude the Kingston's
prosecutor from proving a marriage between the same parties Case,
on an indictment for bigamy; for if even such a sentence were 11. St. Tr.
prima facie evidence, it might be avoided by shewing that it 262.
was obtained by fraud.

CHAPTER THE FORTY-THIRD.

OF

LARCENY FROM LODGINGS.

BREACH of trust was by the common law only a civil injury, but the Legislature has, in the four following cases, made it a criminal offence.

1. In larceny from lodgings.
2. In larceny by menial servants.
3. In larceny by clerks of the Bank of England.
4. In larceny by clerks belonging to the Post-Office.

AS TO THE FIRST POINT, *viz.* Larceny from lodgings.

† *Seff.* 1. By 3. Will. and Mary, c. 9. s. 5. IT IS RECITED to be a frequent practice for idle and disorderly persons to hire lodgings with intent to have an opportunity to take away, embezzle, or purloin the goods and furniture being in such lodgings; AND ENACTED, “that if any person or
“ persons shall take away, with intent to steal, embezzle,
“ or purloin, any chattel, bedding, or furniture, which,
“ by contract or agreement, he or they are to use, or shall
“ be let to him or them to use in or with such lodgings,
“ such taking, embezzling, or purloining shall be, to all
“ intents and purposes, taken, reputed, and adjudged to be
“ larceny and felony, and the offender shall suffer as in
“ case of felony.”

† *Seff.* 2. It was long doubted whether, as a lodger had a special property in the goods which were let with lodgings, the stealing of them was felony (a); but it was at length decided, that this was not a common-law offence (b), (a) *Kely.* 142.
and in consequence of this decision, the above statute was made (c); it has therefore been determined, that if the in- Ante, page 81.
dictment omit to conclude *contra formam statuti* (d), or if it (b) *Rex v.*
1. Show. 56.
(c) 1. Show. 55. (d) *Josling's Case*, O.B. July *Seff.* 1784.

(a) *Ann Falkland's Case*, O. B. Sept. Sess. 1788. so conclude, but appear to be a larceny not within the statute (a), it cannot be made good as an indictment at common law.

Brown's Case, O. R. Sept. Sess. 1789. † *Sec. 3.* It hath been ruled, that a ready-furnished house, the whole of which is let, and no part of it reserved to the lessor, is the mansion-house, and not the lodging of the lessee, within the meaning of this statute.

Sarah Pike's Case, O. B. Feb. Sess. 1784, *coram* GOULD, Justice. † *Sec. 4.* It hath also been determined, that if lodgings be let to a *married woman* during co-habitation with her husband, and the husband afterwards assents to the contract, the indictment must state that the lodgings were let to *the husband*, for if it state that they were let to *the wife*, it is erroneous.

Eliz. May's Case, O. B. Sept. Sess. 1784, *coram* HOTHAM, Baron. † *Sec. 5.* So also, it seems that a *wife* cannot be indicted for stealing goods from a lodging stated to have been let by contract to *her husband*, if it appear in evidence, that the husband cohabited with her at the time the felony was committed, for she is in such case under his coercion, and it shall be presumed to have been done by his command or consent.

Case of Ambrose Mann, O. B. July Sess. 1786, *coram* ASHURST, Justice. † *Sec. 6.* But if the indictment state the lodgings as let to the husband, and it appears upon the evidence, that the lodgings were in fact let to the wife; that the husband seldom came, and never slept there; that the wife lived entirely upon her own labour; that the goods were pawned by her servant; and that at the time they were pawned, the husband was at a distance in the country; the wife may be found guilty: for here it cannot be presumed that she acted under his coercion.

Sarah Bill's Case, O. B. May Sess. 1751. † *Sec. 7.* It has also been decided, that if the lodgings are let to two persons, as to a mother and to her widowed daughter, the indictment must state the joint contract.

Butler's Case, O. B. Feb. Sess. 1784. † *Sec. 8.* It has also been ruled, that if it appear upon the evidence, that the felony was committed after the term for which the contract was made, had expired, the prisoner must be acquitted.

Ann Hope's Case, July Sess. 1784. † *Sec. 9.* It is also said, that it is indispensably necessary in an indictment on this statute, to state the name of the landlord, or person by whom the lodgings were let.

† *Sect. 10.* It has also been said, that the mere act of pawning the furniture let with a lodging is hardly sufficient evidence against the lodger of his intention to convert them feloniously to his own use, if it appear that he had been in the habit of so doing, for the purpose of supplying a temporary necessity, and of restoring the goods to the lodgings at a subsequent time; for that the statute 30. Geo. 2. c. 24. s. 3. (a) enacts, "That if any person shall pawn the goods of another without his consent, he shall, on conviction, on the oath of one witness before one magistrate, forfeit twenty shillings, and the full value of the goods, and if not paid, be committed to the house of correction, as the act directs;" and it has been repeatedly held, that a statute inflicting a lesser penalty is to be taken, in that particular instance, as a virtual repeal of a statute inflicting a greater penalty on the same offence (b).

The Case of William Patum, O. B. May Sess. 1785, coram ADAM, Recorder.

(a) The same is enacted by 29. Geo. 3. c. 57. s. 5.

(b) Rex v. Davis, Cases C. L. 228.

† *Sect. 11.* It seems also, that the goods charged to have been purloined must be furniture of such a description as is proper to be let and used with the kind of lodgings.

† *Sect. 12.* It has also been decided, that an indictment on this statute, stating, that C. D. the defendant, at such a time and place, &c. "the goods and chattels of A. B. (the same goods and chattels being in a certain lodging-room in the dwelling-house of the said A. B. there situate, let by contract by the said A. B. to the said C. D. and to be used by the said C. D. with the lodging aforesaid), then and there being found, feloniously did steal, &c." is good, as being the common form constantly used, although for want of the word "then" between "situate" and "let," it does not appear but that the contract was at an end at the time the felony was committed.

Cafe of John Smith Burnel, Dec. Sess. 1793, on a case reserved for the opinion of the twelve judges.

CHAPTER THE FORTY-THIRD

CONTINUED.

OFFENCES BY MENIAL SERVANTS.

BREACH of trust by menial servants may be committed,

1. By their going away with such property as may be actually trusted to their care and keeping during the lives of their masters.
2. By despoiling such property as is constructively under their care on the death of their masters.
3. By suffering their master's house to be burned through negligence.

As to THE FIRST POINT, *viz.* Larceny by menial servants during the lives of their masters.

3. Inst. 104.

† *Stat. I.* By 21. Hen. 8. c. 7. f. 1. IT IS RECITED, "That divers, as well noblemen as other the king's subjects, have, upon confidence and trusts, delivered unto their servants their caskets, and other jewels, money, goods, and chattels, safely to be kept to the use of their said masters or mistresses, and after such delivery the said servants have withdrawn themselves, and gone away from their said masters or mistresses, with the said caskets, jewels, money, goods, and chattels, or part thereof, to the intent to steal the same, and defraud their said masters or mistresses thereof; and sometime being with their said masters or mistresses, have converted the said jewels, money, and other chattels, or part thereof, to their own use, which misbehaviour so done was doubtful in the common law, whether it were felony or not; and by reason thereof, the afore said servants have been in great boldness to commit such or like offences:" and IT IS ENACTED, "That all and singular such servants, to whom
 " any such caskets, jewels, money, goods, or chattels, by
 " his or their said masters or mistresses, shall from hence-
 " forth so be delivered to keep, that if any such servant or
 " servants withdraw him or them from their said masters
 " and mistresses, and go away with the said caskets, jewels,
 " money,

“ money, goods, or other chattels, or any part thereof, to
 “ the intent to steal the same, and defraud his or their said
 “ masters or mistresses thereof, contrary to the trust and
 “ confidence to him or them put by his or their said mas-
 “ ters or mistresses, or else being in the service of his said
 “ master or mistress, without assent or commandment of
 “ his masters or mistresses, he embezzle the same caskets,
 “ jewels, money, goods, or chattels, or any part thereof,
 “ or otherwise convert the same to his own use, with like
 “ purpose to steal it; that if the said caskets, jewels, money,
 “ goods, or chattels, that any such servant shall so go away
 “ with, or which he shall embezzle with purpose to steal it,
 “ as is aforesaid, be of the value of forty shillings, or above,
 “ that then the same false, fraudulent, and untrue act or
 “ demeanour from henceforth shall be deemed and adjudged *Dyer 5.*
 “ felony; and he or they so offending, to be punished, as
 “ other felons be punished for felonies committed, by the
 “ course of the common law.”

† *Sect. 2.* But by 21. Hen. 8. c. 7. f. 2. it is provided, *This statute*
 “ That this act, or any thing therein contained, shall not *shall not ex-*
 “ in any wise extend, or be prejudicial to any apprentice *tend to an ap-*
 “ or apprentices, nor to any person within the age of *prentice, or*
 “ eighteen years, going away with his or their master's *one within 18*
 “ goods or jewels, or otherwise converting the same to his *years of age.*
 “ or their own uses, during the time of their apprenticeship, *27. H. 8. c. 17.*
 “ or being within the age of eighteen years, but that every *28. H. 8. c. 2.*
 “ apprentice or apprentices, such person or persons being *Rep. by 1.*
 “ within the said age, doing or offending contrary to this *Mar. sess. 1.*
 “ present act, shall be, and stand in like case as they and *c. 1. and made*
 “ every of them were before the making of this act; the *perpetual by*
 “ same act to continue and endure unto the next parlia- *5. El. c. 10.*
 “ ment.”

† *Sect. 3.* The benefit of clergy was taken away from all
 felonies within this statute by 27. Hen. 8. c. 17. and restored
 by 1. Edw. 6. c. 12. But by 12. Ann. c. 7. it is enacted,
 “ That whoever shall feloniously steal to the value of forty
 “ shillings, or more, being in any dwelling-house or out-
 “ house thereto belonging, or shall aid or assist to commit
 “ any such offence, shall be absolutely debarred of the be-
 “ nefit of clergy.”—But IT IS PROVIDED, “ that this shall
 “ not extend to apprentices under the age of fifteen years,
 “ who shall rob their masters as aforesaid.”

In the construction of this statute it hath been holden :

Sect. 4. FIRST, That it extends only to such as were *See 1. Hale*
 servants to the owner of the goods, both at the time when *667, 668.*
 they *Dalt. c. 102.*
Summary 63,

they were delivered, and also at the time when they were stolen.

Dyer 5.
Sum. 62, 63.
3. Inst. 105.
Dalt. c. 102.

Sect. 5. SECONDLY, That it is strictly confined to such goods as are delivered to keep, and therefore that a receiver, who having received his master's rents runs away with them; or a servant, who being intrusted to sell goods, or to receive money due on a bond, sells the goods, &c. and departs with the money, is not within the statute; but that a servant who receives his master's goods from another servant to keep for the master, is as much guilty as if he had received them from the master's own hands, because such a delivery is looked upon as a delivery by the master.

Summ. 63.
Dalt. c. 102.
Dyer 5.

Sect. 6. THIRDLY, That it includes not the wasting or consuming of goods, howsoever wilful it may be; nor the taking away of an obligation, or any other bare *chose in action*.

H. 7. 16.
Crom. 50.
Dalt. c. 102.

Sect. 7. FOURTHLY, That it extends not to the taking of such things whereof the actual property is not in the master at the time; and therefore, that if a servant having money, or corn, &c. delivered to him, melt down the money of his own head, without the command of his master, into a piece of plate; or turn the corn into malt, and then run away with them, that he is not within the statute, because the property of these things is so far changed, by altering them in such a manner, that they cannot be known again, and the master cannot afterwards take them without a trespass: but it is agreed, that if a servant make a suit of cloaths of cloth, or a pair of shoes of leather, delivered to him by the master, and then run away with them, that he is within the statute, because the property is no way altered; and even in the first case, whether the very taking of the plate or malt be within the statute, or not, yet I can see no reason, why the whole act of the servant taken together, should not be looked upon as a conversion of the master's goods to his own use, with an intent to steal them, which brings it within the express letter of the statute: and it has been resolved, that a servant who changes his master's money from silver to gold, and then runs away with it, &c. is within the statute; and I can see no good distinction between that and the present case.

See Crom. 50.
Dalt. c. 102.

1. Hale 668.

† *Sect. 8.* FIFTHLY, That although the statute 21. Hen. 8. c. 7. exempts an apprentice or servant under the age of eighteen years, from the pain of felony enacted *de novo* by this statute, namely, where goods are actually delivered to him, yet it leaves him in the same condition, as to any felony.

felony at common law, as if he were not excepted; and therefore if a butler, shepherd, apprentice, or other servant, under the age of eighteen years, feloniously take away goods not delivered to them by the master, they are guilty of felony at common law, although they are under the value of forty shillings.

As to THE SECOND POINT, *viz.* Larceny by menial servants after the death of their masters.

† *Stat.* 9. Menial servants were construed, by the common law, to be *quodammodo* in possession of their master's household goods, between the time of his death and the ascertainment of his legal representative, and therefore their embezzling such goods was held not to be felony. To remedy this inconvenience, the statute 33. Hen. 6. c. 1. after reciting, "That divers household servants, as well of lords, as of other persons of good degree, had then of late, shortly after the death of their said lords and masters, violently and riotously taken and spoiled the goods which were of their said lords and masters at the time of their death, and the same distributed among themselves;" ENACTS, "That after information made to the chancellor by the executors of any such person, or two of them, of such riot, taking, and spoil; the chancellor, by the advice of the two chief justices, and chief baron, or two of them, may make out writs to such sheriffs as shall be thought necessary, commanding them to make such proclamation, as by the said statute is directed, for the offenders to appear in the king's bench at such a day, whereupon if they make default, they shall be attainted of felony; but if they appear, they shall be committed or bailed, till they have answered the said executors in such actions, which the said executors will declare against them, or any of them, for the riot, taking, and spoiling aforesaid." 1. Hale 515.
Ante 91.
1. Hale 667.
4. Burn 118.
This was a process much in use in case of great offences, especially about this king's reign, to convict men sometimes in civil offences, sometimes in cases criminal upon default of appearance, at the return of the proclamation.
1. Hale 654.
3. Inst. 104.

As to THE THIRD POINT, *viz.* Menial servants suffering their master's house to be burned.

† *Stat.* 10. By the 6. Ann. c. 31. "If any menial or other servant, through negligence or carelessness, shall fire, or cause to be fired any dwelling-house or out-house, they shall forfeit one hundred pounds, on conviction by one witness, before one justice, or suffer eighteen months imprisonment, &c." Ld. Ray. 99.
Co. Lit. 57.
note (1).

See also 12. Geo. 3. c. 73. s. 35. 14. Geo. 3. c. 78. s. 84. And for offences by servants in particular branches of trade, vide 4. Burn 118.

CHAPTER THE FORTY-THIRD

CONTINUED.

LARCENY BY CLERKS

O F

THE BANK OF ENGLAND.

† *Secl.* 1. **BY** 15. Geo. 2. c. 13. f. 12. it is enacted, " That if
 " any officer or servant of the Bank of England,
 " being entrusted with any note, bill, dividend warrant, bond,
 " deed, or any security, money, or other effects belonging to
 " the said company, or having any bill, dividend warrant,
 " bond, deed, or any security or effects of any other person
 " lodged or deposited with the said company, or with him as
 " an officer or servant of the said company, shall secrete, em-
 " bezzle, or run away with any such note, bill, dividend
 " warrant, bond, deed, security, money, or effects, or any
 " part of them ; every officer or servant so offending, shall
 " be deemed guilty of felony, and suffer death without
 " benefit of clergy."

Case of J.
 Waite, Cases
 C. L. 26.

† *Secl.* 2. It has been held previous to the passing of
 the above statute, that it was not felony at the common law
 for a cashier of the Bank of England to steal an India bond
 committed to his care, pursuant to the statute 12. Geo. 1.
 c. 32. and therefore that this statute creates a *new felony* un-
 known to the common law.

CHAPTER THE FORTY-THIRD

CONTINUED.

LARCENY BY CLERKS

BELONGING TO

THE POST-OFFICE.

BY 9. Ann. c. 10. s. 40. it is recited, "That abuses may be committed by wilfully opening, embezzling, detaining, and delaying of letters or packets, to the great discouragement of trade, commerce, and correspondence;" AND ENACTED, "That no person or persons shall presume wittingly, willingly, or knowingly, to open, detain, or delay, or cause, procure, permit, or suffer to be opened, detained, or delayed, any letter or letters, packet or packets, after the same is or shall be delivered into the general or other post-office, or into the hands of any person or persons employed for the receiving or carrying post letters, and before delivery to the person or persons to whom they are directed, or for their use; except by an express warrant in writing under the hand of one of the principal secretaries of state, for every such opening, detaining, or delaying; or except in such cases where the party or parties, to whom such letter or letters, packet or packets, shall be directed, or who is or are hereby chargeable with the payment of the port or ports thereof, shall refuse or neglect to pay the same; and except such letters or packets as shall be returned for want of true directions, and where the party, to whom the same is or are directed, cannot be found; and that every person or persons offending in manner aforesaid, or who shall embezzle any such letter or letters, packet or packets, shall for every such offence forfeit the sum of twenty pounds; the said penalties for any such offence committed in *England*, *Wales*, or *Berwick upon Tweed*, to be recovered by action, bill, plaint, or information in any of her majesty's courts of record at *Westminster*; and for any such offence committed in that part of *Great Britain* called *Scotland*, to be recovered in the court of sessions or exchequer there; "such

No letters to be opened, detained, or delayed.

Exception.

“ such penalties respectively to be recovered by such person
 “ or persons as will inform or sue for the same, together
 “ with full costs of suit; and over and above such penalty
 “ as aforesaid, every such person or persons so offending as
 “ aforesaid, shall be for ever incapable of having, using,
 “ exercising, or enjoying any office, trust, or employment
 “ in or relating to the post-office, or any branch thereof.”

Penalty of se-
 creting or em-
 bezzling any
 letter with
 any bank bill
 or note, &c.

+ *Seft.* 2. By 5. Geo. 3. c. 25. s. 17. it is enacted, “ That
 “ if any deputy, clerk, agent, letter-carrier, or other officer
 “ whatsoever, appointed, or to be hereafter appointed, and
 “ employed in the business of the post-office, shall secrete,
 “ embezzle, or destroy any letter, packet, bag, or mail of
 “ letters, which he, she, or they, shall and may be respec-
 “ tively entrusted with, or which shall have come to his,
 “ her, or their hands or possession, by virtue of their re-
 “ spective employments in the said post-office, containing
 “ any bank note, bank post bill, bill of exchange, exchequer
 “ bill, *South Sea* or *East India* bond, dividend warrant of the
 “ bank, *South Sea*, *East India*, or any other company,
 “ society, or corporation, navy or victualling bill, seaman’s
 “ ticket, state lottery ticket, goldsmith’s note for the pay-
 “ ment of money, or other bond or warrant, bill, or pro-
 “ missory note for the payment of money, or *American* pro-
 “ vincial bill of credit; or shall steal and take out of any
 “ letter or packet that shall come to his, her, or their hands
 “ or possession, by virtue of their respective employments,
 “ any such bank note, bank post bill, bill of exchange, ex-
 “ chequer bill, *South Sea* or *East India* bond, dividend war-
 “ rant of the bank, *South Sea*, *East India*, or any other
 “ company, society, or corporation, navy or victualling
 “ bill, seaman’s ticket, state lottery ticket, goldsmith’s note
 “ for the payment of money, or other bond or warrant, or
 “ promissory note for the payment of money, or *American*
 “ provincial bill of credit, with intent to secrete, embezzle,
 “ or destroy the same; every such offender or offenders,
 “ being thereof convicted in due form of law, shall be
 “ deemed guilty of felony, and shall suffer death as a felon.”

Penalty of any
 officer, &c.,
 embezzling or
 misapplying
 the postage
 money, &c.

+ *Seft.* 3. By 5. Geo. 3. c. 25. s. 19. it is further enacted,
 “ That if any deputy, clerk, agent, letter-carrier, or other
 “ servant, appointed, authorized, and intrusted, to take in
 “ letters or packets, and receive the postage thereof, shall
 “ embezzle, or apply to his, her, or their own use, any
 “ money or monies by him, her, or them, received with
 “ such letters or packets, for the postage thereof; or shall
 “ burn or otherwise destroy any letter or letters, packet or
 “ packets, by him, her, or them, so taken in or received;
 “ or who, by virtue of their respective offices, shall advance
 “ the

“ the rates upon letters or packets sent by the post, and
 “ shall not duly account for the money by him, her, or
 “ them, received for such advanced postage; every such
 “ offender or offenders, being thereof convicted as aforesaid,
 “ shall be deemed guilty of felony.”

+ *Sec. 4.* By 7. Geo. 3. c. 50. s. 1. IT IS RECITED, “ That Officers or
 it is of the utmost importance to the trade and commerce of others, who
 these kingdoms, that all letters, packets, bank notes, bills of ^{shall secrete,}
 exchange, and other things, may be sent and conveyed by ^{&c. any let-}
 the post with the greatest safety and security; and it having ^{ter, &c. com-}
 been found necessary, that some further regulations and pro- ^{raising any}
 visions should be made for that purpose.” IT IS ENACTED, ^{ment of mo-}
 “ That if any deputy, clerk, agent, letter-carrier, post-boy, ^{ney; or shall}
 “ or rider, or any other officer or person whatsoever, em- ^{beal, &c.}
 “ ployed, or to be hereafter employed, in receiving, stamp- ^{Death.}
 “ ing, sorting, charging, carrying, conveying, or delivering.
 “ letters or packets, or in any other business relating to the
 “ post-office, shall secrete, embezzle, or destroy, any letter
 “ or letters, packet or packets, bag, or mail of letters,
 “ which he, she, or they, shall and may be respectively en-
 “ trusted with, or which shall have come to his, her, or
 “ their hands or possession, containing any bank note, bank
 “ post-bill, bill of exchange, exchequer bill, *South Sea* or
 “ *East India* bond, dividend warrant of the bank, *South Sea*,
 “ *East India*, or any other company, society, or corporation,
 “ navy or victualling or transport bill, ordnance debenture,
 “ seaman’s ticket, state lottery ticket or certificate, bank
 “ receipt for payment on any loan, note of assignment of
 “ stock in the funds, letter of attorney for receiving an-
 “ nuities or dividends, or for selling stock in the funds, or
 “ belonging to any company, society, or corporation,
 “ *American* provincial bill of credit, goldsmith’s or banker’s
 “ letter of credit or note for or relating to the payment of
 “ money, or other bond or warrant, draught, bill, or pro-
 “ missory note whatsoever, for the payment of money; or
 “ shall steal and take out of any letter or packet that shall
 “ come to his, her, or their hands or possession, any such
 “ bank note, bank post bill, bill of exchange, exchequer
 “ bill, *South Sea* or *East India* bond, dividend warrant of the
 “ bank, *South Sea*, *East India*, or any other company, society,
 “ or corporation, navy or victualling or transport bill,
 “ ordnance debenture, seaman’s ticket, state lottery ticket
 “ or certificate, bank receipt for payment on any loan, note
 “ of assignment of stock in the funds, letter of attorney for
 “ receiving annuities or dividends, or for selling stock in
 “ the funds, or belonging to any company, society, or cor-
 “ poration, *American* provincial bill of credit, goldsmith’s
 “ or banker’s letter of credit or note for or relating to the
 “ payment

" payment of money, or other bond or warrant, draught,
 " bill, or promissory note whatsoever, for the payment of
 " money; every such offender or offenders, being thereof
 " convicted in due form of law, shall be deemed guilty of
 " felony, and shall suffer death as a felon without benefit
 " of clergy."

Officers, or
 others, who
 shall destroy
 any letter, &c.
 guilty of fel-
 ony.

+ *Sec. 5.* By 7. Geo. 3. c. 50. s. 3. it is further enacted,
 " That if any deputy, clerk, agent, letter-carrier, officer, or
 " other person whatsoever, employed or hereafter to be
 " employed in any business relating to the post-office, shall
 " take and receive into his, her, or their hands or possession
 " any letter or letters, packet or packets, to be forwarded
 " by the post, and receive any sum or sums of money there-
 " with for the postage thereof, shall burn or otherwise de-
 " stroy any letter or letters, packet or packets, by him, her,
 " or them, so taken in or received; or if any such deputy,
 " clerk, agent, letter-carrier, officer, or other person what-
 " soever, so employed, or hereafter to be so employed, shall
 " advance the rate or rates of postage upon any letter or
 " letters, packet or packets, sent by the post, and shall se-
 " crete, and not duly account for, the money by him, her,
 " or them, received for such advanced postage: every such
 " offender or offenders, being thereof convicted as afore-
 " said, shall be deemed guilty of felony."

Haskell's Case,
 Cases C. L. 1.

+ *Sec. 6.* It seems that these statutes do not create any
 new offence, but that if a sorter of letters embezzle a letter
 containing a bank note, or any other of the securities for
 money mentioned in 2. Geo. 2. c. 25. he is thereby guilty of
 felony at common law, although such letter was intrusted
 to his care.

Case of Ri-
 chard Clay,
 York Assizes.

+ *Sec. 7.* It has been decided, that it is not necessary
 that the servant employed by the post-office should have
 taken the oaths required by 9. Ann. c. 10. s. 17. and 41. in
 order to be within the penalties of the act.

Rex v. Shaw,
 2. Black. 786.

+ *Sec. 8.* It hath been determined, that if a clerk of the
 post-office be indicted on this statute, and the first count
 charge him as " a clerk employed in charging and sorting
 " of letters, &c." and a second count, as " a person em-
 " ployed in the business relating to the general post-office,"
 that the jury may legally convict the offender on the first
 count, by a special finding that he was a *sorter* only, if it
 appear in evidence that he was not a *charger* of letters;
 but that if, on such evidence, they acquit him generally on
 the first count, judgment of " *guilty*" on the second count
 shall be arrested, for it is not proved that he was a person
 em-

employed in any other business relating to the post-office than as a *sorter*, and he is acquitted of having been guilty of the offence in that capacity.

+ *Sec. 9.* It is said, that if a servant of the post-office *Sloper's Case*, embezzle a letter not containing any of the securities men- *Cases C. L.* tioned in the statute 2. Geo. 2. c. 15. and secrete it merely ⁷⁶ for the purpose of defrauding the post-office of the money which he has received for the postage of the letter, he is not indictable on the above statute for the capital felony.

+ *Sec. 10.* It is also said, that it is not a capital offence *Starr's Case*, within the above statute, for a servant of the post-office to *Cases C. L.* secrete a letter containing *money* only, but that he may be in- ¹⁰⁰ dicted for the simple larceny at common law.

CHAPTER THE FORTY-FOURTH.

O F

STEALING CHOSE IN ACTION.

† *Sec.* 1. BY 2. Geo. 2. c. 25. f. 3. it is enacted, “ That ^{To steal or-} if any person or persons shall steal or take ders, tallies, &c. felony.
 “ by robbery any exchequer orders or tallies, or other or-
 “ ders, intitling any other person or persons to any an-
 “ nuity or share in any parliamentary fund, or any ex-
 “ chequer bills, bank notes, *South-Sea* bonds, *East India*
 “ bonds, dividend warrants of the bank, *South-Sea* com-
 “ pany, *East India* company, or any other company, so-
 “ ciety, or corporation, bills of exchange, navy bills or
 “ debentures, goldsmiths notes for payment of money, or
 “ other bonds or warrants, bills, or promissory notes for
 “ the payment of any money, being the property of any
 “ other person or persons, or of any corporation, notwith-
 “ standing any of the said particulars are termed in law a
 “ *chose in action*, it shall be deemed and construed to be
 “ felony, of the same nature and in the same degree, and
 “ with or without the benefit of clergy, in the same man-
 “ ner as it would have been, if the offender had stolen or
 “ taken by robbery, any other goods of like value with the
 “ money due on such orders, tallies, bills, bonds, warrants,
 “ debentures, or notes, or secured thereby, and remaining
 “ unsatisfied, and such offender shall suffer such punish-
 “ ment as he or she should or might have done, if he or she
 “ had stolen other goods of the like value with the monies
 “ due on such orders, tallies, bonds, bills, warrants, deben-
 “ tures, or notes respectively, or secured thereby, and re-
 “ maining unsatisfied; any law to the contrary thereof in
 “ any wise used notwithstanding.”

† *Sec.* 2. By 2. Geo. 2. c. 25. f. 4. it is provided, “ That ^{Not to extend} nothing in this act contained shall extend or be construed to Scotland.
 “ to extend to that part of *Great Britain* called *Scotland*.”

† *Sec.* 3. By 2. Geo. 2. c. 25. f. 5. it is further pro- ^{Not to cor-}
 “ vided, “ That no attainder for any offence hereby made rupt blood.
 “ felony, shall make or work any corruption of blood, loss
 “ of dower, or disinheritance of heirs.”

Vide ante
page 214.
pl. 35.

+ *Sec. 4.* It seems clear that this statute creates a new felony, for a *chose in action* certainly was not the subject of larceny at common law.

Hassell's Case,
C. L. 5.

+ *Sec. 5.* It has been ruled upon debate, that although the statute use the plural number, as "exchequer orders, tallies, exchequer bills, bank notes, *South Sea* bonds, *East India* bonds, dividend warrants, &c." yet a person may be guilty of stealing only *one* of the several articles it enumerates, as one bank note, &c. ; for although the words are plural, yet the statute says, "whenever shall feloniously steal *any* exchequer orders, tallies, &c. notwithstanding *any* of those particulars may be termed in law a *chose in action*;" which plainly shews that it was the intention of the Legislature to make the stealing of a *chose in action* felony; and it would be absurd to say, that the Legislature intended to make it felony to steal *two* exchequer orders, bank notes, &c. of five pounds each, and yet that it should not be felony to steal *one* of ten thousand pounds.

Rex v. New-
land, Old Bai-
ley, Feb. Sess.
1724.

+ *Sec. 6.* It is also said, that if a person be indicted on this statute for stealing a bank note, and the indictment aver that it was signed by *the cashier* whose name it bears, it is indispensably necessary that the *cashier* himself should prove that it is his hand-writing, and that it is a valid bank note.

CHAPTER THE FORTY-FIFTH.

OF

ROBBING ORCHARDS.

REAL property being in its nature *fixed and immoveable*, vide ante page 214. pl. 34. and consequently incapable of being *carried away*, can not become the subject of larceny, to which, as we have already seen, asportation is an indispensable ingredient. But as this distinction, in cases of felony, rendered the safety of many of those descriptions of property which come within the notion of adherence to the freehold, extremely precarious, the Legislature has found it expedient to provide for their protection by various acts of parliament, which may be arranged under the following heads:

1. Of robbing orchards and breaking hedges.
2. Of destroying trees.
3. Of stealing shrubs or plants.
4. Of stealing vegetables.
5. Of destroying madder roots.
6. Of stealing black lead from the mine.
7. Of stealing lead, iron, brass, &c. affixed to a dwelling-house.

AND FIRST, Of robbing orchards and breaking hedges.

† *Stat. 1.* By 43. Eliz. c. 7. "Whoever shall cut or unlawfully take away any corn or grain growing, or rob any orchards or gardens, or break or cut any hedge, pales, rails, or fence; or dig up, or take up any fruit-tree or trees in any orchard, garden or elsewhere, to the intent to take and carry the same away; or shall cut or spoil any wood, or underwoods, poles, or trees standing, not being felony by the laws of this realm, their procurers and knowing receivers shall, on conviction by one witness before one magistrate, make compensation at discretion to the party injured, or be publicly whipped."

† *Sec. 2.* By 15. Car. 2. c. 2. the constable may search the houses of suspected wood-stealers, and carry offenders before a justice, who shall be liable to the penalties of 43. Eliz. if they do not give a satisfactory account of the wood found in their possession.

Upon these acts the following resolutions have been made.

Burnaby's
Case, Lord
Ray. 900.

† *Sec. 3.* That these acts were not made merely against base and indigent offenders, but that a gentleman or offender so styled in the conviction, is within the penalties if he is guilty of the offence.

5. Co. 34.
Salk. 282.

† *Sec. 4.* That the conviction must state the number and the nature of trees cut down; for that is the measure by which the justice is to assess the damages.

Sayer 204.

† *Sec. 5.* That the manner also of the stealing must be stated in the conviction, that the Court may judge whether it be felonious or not, or whether the money ordered to be paid was an adequate compensation to the party injured.

CHAPTER THE FORTY-FIFTH.

CONTINUED.

O F

DESTROYING TREES.

† *Sec. 1.* **BY** 1. Geo. 1. c. 48. it is enacted, “ That whoever
 “ shall maliciously break down, cut up, pluck
 “ up, throw down, bark, or otherwise destroy, deface, or
 “ spoil any timber tree, fruit tree, or any other tree, on
 “ conviction by any two justices of the place, or by the jus-
 “ tices in sessions, on complaint to them made by an in-
 “ habitant, or the owner, &c. shall be kept to hard labour
 “ for three months, and whipped once a month, or if there
 “ be no house of correction, to any other prison for four
 “ months, and whipped once in every month by the com-
 “ mon hangman, and afterwards find sureties for their
 “ good behaviour for two years, and the party grieved may
 “ recover damages and costs from the inhabitants of the
 “ parish, &c. in the same manner and form as is directed
 “ by the 13. Edw. 1. ft. 1. c. 46. for hedges and dykes over-
 “ thrown by persons in the night, unless the offender be
 “ convicted in six months by the parish.”

† *Sec. 2.* By 6. Geo. 1. c. 16. “ Whoever shall cut, take,
 “ destroy, break, throw down, bark, pluck up, burn, de-
 “ face, spoil, or carry away any wood springs, trees, poles,
 “ wood tops of trees, underwoods, coppice woods, thorns
 “ or quickiets, without the consent of the owner, or person
 “ chiefly entrusted with the care and custody thereof, shall,
 “ on conviction by two justices, or at sessions, be liable
 “ to the same penalties and punishments as are inflicted by
 “ 1. Geo. 1. ft. 2. c. 48. which conviction shall be final;
 “ and unless the same be had within six months, such
 “ lords of manors, owners and proprietors who shall
 “ be injured by the offence, shall have such remedy and
 “ receive such compensation from the parishes or places
 “ joining on such wood springs, &c. as is directed by
 “ 13. Edw. 1. ft. 1. c. 46.”

† *Stat.* 3. And by the black act, 9. Geo. 1. c. 22. "Whoever shall cut down, or otherwise destroy any trees planted in any avenue, or growing in any garden, orchard or plantation, for ornament, shelter, or profit; or shall forcibly rescue any person in lawful custody for the same; or shall by gift, or promise of money, or other reward, procure any of his majesty's subjects to join him or them in any such unlawful act, shall suffer death without benefit of clergy."

† *Stat.* 4. By 29. Geo. 2. c. 36. f. 8. amended by 31. Geo. 2. c. 41. "If any person shall unlawfully cut, take, destroy, break, throw down, bark, pluck up, burn, deface, spoil, or carry away any tree, growing in any waste, wood, or pasture, in which any person or persons, or bodies politic or corporate, hath or have a right of common, he shall incur the like penalty as by 6. Geo. 1. c. 16."

Penalty on cutting down, &c. in the night-time, any timber trees, or roots, &c. in inclosed ground, &c.

† *Stat.* 5. By 6. Geo. 3. c. 36. IT IS RECITED, "That divers persons have, of late years, wilfully and maliciously cut down, barked, or otherwise destroyed, timber trees, and trees standing for, and likely to become, timber, growing as well in the several forests, chafes, and other open grounds, as in the woods, and plantations, and inclosed grounds, within this kingdom; to the great detriment of the owners of such trees, and to the discouragement of planting in general, so beneficial to *Great Britain*:" AND ENACTED, "That all and every person and persons who shall, in the night-time, lop, top, cut down, break, throw down, bark, burn, or otherwise spoil or destroy, or carry away, any oak, beech, ash, elm, fir, chestnut, or asp, timber tree, or other tree or trees standing for timber, or likely to become timber, without the consent of the owner or owners thereof first had and obtained, shall be subject and liable to the like pains and penalties as in cases of felony; and the Court, by and before whom such person or persons shall be tried, shall, and hereby have authority to transport such person or persons, for the space of seven years, to any of his majesty's plantations in *America*, in like manner as other felons are directed to be transported by the laws and statutes of this realm: And all and every person and persons who shall be wilfully aiding, abetting, or assisting, in such cutting down, breaking, throwing down, barking, burning, or otherwise spoiling or destroying, or carrying away, any such oak, beech, ash, elm, fir, chestnut, or asp, timber tree, or other tree or trees standing for timber,"

"b.c.,

“ber, or likely to become timber, as aforesaid, shall be
 “liable to the same punishment, as if he, she, or they, had
 “stolen the same.”

† *Stat. 6.* By 6. Geo. 3. c. 48. IT IS RECITED, “That Persons con-
 the preservation of timber trees, or trees likely to become ^{victed of da-}
 timber, is of great consequence to this kingdom;” maging, &c.
 AND ENACTED, “That every person who shall wilfully ^{any timber}
 “cut or break down, bark, burn, pluck up, lop, top, ^{trees, &c. or}
 “crop, or otherwise deface, damage, spoil, or destroy, or ^{the}
 “carry away, any timber tree or trees, or trees likely to ^{tops thereof,}
 “become timber, or any part thereof, or the lops or tops ^{&c. forfeit, &c.}
 “thereof, without the consent of the owner or owners
 “thereof first had and obtained, or, in any of his majesty’s
 “forests or chases, without the consent of the surveyor or
 “surveyors, or his or their deputy or deputies, or person
 “or persons intrusted with the care of the same, and shall
 “be thereof convicted upon the oath of one or more cre-
 “dible witness or witnesses, before any one or more of
 “his majesty’s justices of the peace, for the county, city,
 “riding, division, district, or place, wherein such offence
 “shall have been committed, shall, for the first offence,
 “forfeit and pay such sum of money, not exceeding twenty
 “pounds, as to such justice or justices shall seem meet,
 “together with the charges previous to and attending such
 “conviction, to be ascertained by such justice or justices
 “who shall convict the offender; and upon non-payment
 “thereof, such justice or justices shall commit the offender
 “to the common gaol of the county or place where the
 “offence shall be committed, there to remain without bail
 “or mainprize for any time not exceeding twelve months,
 “nor less than six months, or until the penalty and charges
 “shall be paid; and if any person so convicted shall be
 “guilty of the like offence a second time, and shall be
 “thereof convicted in like manner, such person shall for-
 “feit and pay such sum of money, not exceeding thirty
 “pounds, as to such justice or justices shall seem meet,
 “together with the charges previous to and attending such
 “conviction, to be ascertained by such justice or justices
 “who shall convict the offender; and upon non-payment
 “thereof, such justice or justices shall commit the offender
 “to the common gaol of the county or place where the
 “offence shall be committed, there to remain without bail
 “or mainprize for any time not exceeding eighteen
 “months, nor less than twelve months, or until the pe-
 “nalty and charges shall be paid; and if any person so
 “convicted shall be guilty of the like offence a third time,
 “and shall be thereof convicted in like manner, such per-
 “son shall be deemed guilty of felony, and the Court, by
 “and

“ and before whom such person shall be tried, shall and
 “ hereby hath authority to transport such person or per-
 “ sons, for the space of seven years, to any of his majesty’s
 “ plantations in *America*, in like manner as other felons
 “ are directed to be transported by the laws and statutes of
 “ this realm.”

† *Sett.* 7. By 6. Geo. 3. c. 48. f. 2. it is enacted,
 “ That all oak, beech, chestnut, walnut, ash, elm, cedar,
 “ fir, asp, lime, sycamore, and birch trees, shall be deemed
 “ and taken to be timber trees, within the true meaning and
 “ provision of this act.”

† *Sett.* 8. By 6. Geo. 3. c. 48. f. IT IS RECITED, “That
 many idle and disorderly persons have of late years made
 a practice of going into the woods, underwoods, and
 wood grounds of divers of his majesty’s subjects, and there
 cut, and carried away, great quantities of young wood, of
 various kinds, for making of poles and walking sticks, and
 for various other uses; and in beech, and other woods
 and underwoods, under pretence of getting firewood, have
 cut down, boughed, split off, or otherwise damaged or de-
 stroyed the growth of the said woods and underwoods, to
 the great injury and damage of the lawful owners thereof;
 and that the laws now in being are not found suf-
 ficient to remedy the aforesaid evils:” and therefore enacted,
 “ That all and every person and persons who shall go into the
 “ woods, under-woods, or wood-grounds, of any of his
 “ majesty’s subjects, not being the lawful owner or owners
 “ thereof, and shall there cut, lop, top, or spoil, split down
 “ or damage, or otherwise destroy, any kind of wood or un-
 “ derwood, poles, sticks of wood, green stubs, or young
 “ trees, or carry or convey away the same; or shall have
 “ in his, her, or their custody, any kind of wood, un-
 “ derwood, poles, sticks of wood, green stubs, or young
 “ trees, and shall not give a satisfactory account how he,
 “ she, or they, came by the same, and shall be thereof con-
 “ victed before any one or more of his said majesty’s justices
 “ of the peace, on the oath of one or more credible witness
 “ or witnesses; shall, for the first offence, forfeit and pay
 “ immediately on conviction, any sum not exceeding the
 “ sum of forty shillings, together with the charges pre-
 “ vious to and attending such conviction, to be ascertained
 “ by the said justice or justices who shall convict the of-
 “ fender or offenders: And if any person or persons shall
 “ commit any of the offences aforesaid a second time,
 “ and shall be thereof again convicted in manner aforesaid;
 “ he,

Persons con-
 victed of cut-
 ting, &c. any
 wood, &c. or
 who shall have
 any such in
 their custody,
 &c. forfeit, &c.

“ he, she, or they, shall forfeit and pay any sum not exceeding the sum of five pounds, together with the charges previous to and attending such conviction, to be ascertained as aforesaid : And if any person or persons shall commit any of the offences aforesaid a third time ; that then such person and persons, being duly convicted thereof according to law, shall be deemed and adjudged an incorrigible rogue or rogues, and shall be punished as such.”

† *Sec. 9.* By 6. Geo. 3. c. 48. f. 5. it is further enacted, “ That his majesty’s justices of the peace for the respective counties, cities, ridings, divisions, or places, wherein any of the offences committed against this act shall be done, are hereby authorized to put this act in execution, and to administer an oath to any such credible witness or witnesses.” Justices to put act in execution.

† *Sec. 10.* By 6. Geo. 3. c. 48. f. 6. it is recited, “ That the mischiefs intended by this act to be prevented may be evaded on account of the offender’s not being able to pay down the sum forfeited, and charges incurred thereby ; such offenders frequently having no goods, or other chattels, whereon the same can be levied ;” therefore it is enacted, “ That it shall and may be lawful for such justice or justices, unless the respective forfeitures shall be paid down upon conviction forthwith, where not otherwise directed by this act, by warrant under his or their hands and seals to commit such offender or offenders, for the first offence, to the house of correction for one month, to hard labour, and to be once whipped there ; and for the second offence, where not otherwise directed by this act, to the house of correction for three months, to hard labour, and to be whipped there once in every one of the said three months.”

† *Sec. 11.* By 6. Geo. 3. c. 48. f. 7. it is further enacted, “ That if any person or persons shall, at any time, hinder, or attempt to prevent, the seizing or securing any person employed in carrying away any such timber or other trees ; every such person so hindering or attempting to prevent such seizing or securing, shall, for every such offence, forfeit and pay the sum of ten pounds to the person or persons who shall convict such offender : And if the said sum be not immediately paid on conviction, the person or persons so convicted shall be, by the justice or justices before whom he, she, or they, shall be convicted, committed to the house of correction, to Persons hindering, or attempting to prevent, seizing offenders, &c.

“ hard

“hard labour for any time not exceeding six calendar months.”

Application of forfeitures. † *Seet.* 12. By 6. Geo. 3. c. 48. s. 8. it is further enacted, “That one moiety of all and every the forfeitures herein before directed to be paid in pursuance of this act, and not otherwise directed, shall go to the informer, and the other moiety to the person or persons aggrieved.”

Convictions to be certified to sessions. † *Seet.* 13. By 6. Geo. 3. c. 48. s. 9. it is further enacted, “That the conviction and convictions of all and every offender and offenders against this act, shall be certified by the justice or justices of the peace before whom the same shall be made, to the next general quarter-sessions of the peace, to be filed amongst the records of the said sessions; which said conviction shall be good and effectual in law to all intents and purposes; and shall not be quashed, set aside, or adjudged void or insufficient, for want of any form or words whatsoever; nor to be liable to be removed by *certiorari* into his majesty’s court of *king’s bench*, but shall be deemed and taken to be final to all intents and purposes whatsoever.”

Conviction not liable to be quashed, &c.

Howe’s Case, Cases C. L. 378. † *Seet.* 14. It has been decided, that the statute 6. Geo. 3. c. 48. does not repeal 6. Geo. 3. c. 36. but that they are *in pari materia* and to receive a construction accordingly.

The recited clause, &c. extended to the Royal forests. † *Seet.* 15. By 9. Geo. 3. c. 41. s. 8. it is recited, “That great destruction having been made of hollies, thorns and quicksets, growing upon his majesty’s forests and chases within this kingdom, to the great prejudice of his majesty’s deer, and other game therein; and also of hollies, thorns, and quicksets, growing in the woods and wood-grounds of his majesty’s subjects; for the better preventing such evil practices and abuses for the future,” it is enacted, “That the said clause in the said act made in the sixth year of his present majesty’s reign, and all and every the penalties, forfeitures, and punishments thereby inflicted, and all other provisions, clauses, matters, and things relating thereto, shall extend, and be deemed, taken, and construed to extend, and shall be applied and put in execution, in relation to all his majesty’s forests and chases within this realm; and to all and every person or persons who shall, without legal right or authority, by night or day, cut down, destroy, take, carry, or convey away any hollies, thorns, or quicksets growing or being upon any of his majesty’s said forests or chases,

“or

“ or within the woods or wood grounds of any of his majesty’s subjects ; or who shall have in his, her, or their custody or possession any such hollies, thorns, or quicksets, and shall not give a satisfactory account how he, she, or they came by the same, and shall be thereof convicted before any one or more of his majesty’s justices of the peace in the manner prescribed and directed by the said act ; and such justice or justices is or are hereby authorized to administer oaths, and proceed in the like manner for the conviction and punishment of every offender in the premises, as fully and effectually to all intents and purposes as if the several provisions in the said act had been herein particularly repeated and applied to the offences herein before specified.”

† *Stat.* 16. By 13. Geo. 3. c. 53. reciting, that doubts having prevailed whether any other trees than those mentioned in 6. Geo. 3. c. 48. shall be deemed and taken to be timber trees within the meaning of the said act ; “ IT IS ENACTED, for the better preservation of the several useful and valuable timber trees hereafter mentioned, casually omitted to be mentioned in the said act, “ That the trees called poplar, Poplar, alder, alder, larch, maple, and hornbeam, shall also be deemed larch, maple, and taken to be timber trees : And all and every person or persons who shall wilfully cut or break down, to be deemed timber trees. bark, burn, pluck up, lop, top, crop, or otherwise damage, face, damage, spoil, or destroy, or carry away any poplar, alder, larch, maple, and hornbeam, or any part thereof, or the lops or tops thereof, without the consent of the owner or owners thereof first had and obtained, or of some person intrusted with the care of such tree or trees ; such person or persons shall, if found guilty of any offence or offences, be convicted in like manner as persons are directed so to be, for offences of the like kind, concerning trees, deemed timber trees, in the above in part recited act ; and upon such conviction or convictions shall be liable to all and every the penalties, forfeitures, and punishments therein inflicted for any such like offence or offences ; and all and every justice and justices of the peace is and are hereby authorized, on complaint made to him or them of any offence or offences, to administer oaths, and to proceed in like manner to conviction and punishment of every offender against this act, as fully and effectually as if the said trees hereby declared, deemed, and taken to be timber trees, had been expressly so deemed and declared to be in the said act passed in the sixth year of his present majesty’s reign ; and such conviction and con-

“ victions

“victions shall be certified by the justice or justices before whom the same shall be made to the next quarter-sessions of the peace to be holden for the county wherein such offence or offences were committed, in the form of words, or to that effect, directed by the said act; and all and every the forfeitures for offences against this act shall be paid and applied in the manner forfeitures are directed to be paid in the said recited act.”

CHAPTER THE FORTY-FIFTH

CONTINUED.

O F

S T E A L I N G S H R U B S

A N D

P L A N T S.

† *Sec.* 1. BY 6. Geo. 3. c. 36. IT IS RECITED, “ That the disposition of nursery-men to improvements in planting and gardening, through *Great Britain*, is of great use to the public ; and many nursery-men, gardeners, and others, have collected and cultivated, at great expence, roots, shrubs, and plants, of every country, and imported, cultivated, and exported, great quantities thereof, and do thereby support themselves and many others of his majesty’s subjects : And whereas many evil-disposed persons, well knowing the value of such roots, shrubs, and plants, have, of late years, frequently entered into nurseries, gardens, and other inclosed grounds in general, and of the nursery-men and gardeners in particular, and have dug up, taken, or carried away, out of such nurseries, and garden-grounds, roots, shrubs, and plants, and likewise destroyed others on the spot, to a very considerable value :” for remedy whereof IT IS ENACTED, “ That all and every person and per-

“ sons that shall in the night-time pluck up, dig up, break,
 “ spoil, or destroy, or carry away, any root, shrub, or plant,
 “ roots, shrubs, or plants, of the value of five shillings,
 “ and which shall be growing, standing, or being, in the
 “ garden ground, nursery ground, or other inclosed ground,
 “ of any person or persons whomsoever, shall be deemed
 “ and construed to be guilty of felony ; and every such
 “ person or persons shall be subject and liable to the like
 “ pains and penalties as in cases of felony ; and the Court,
 “ by and before whom such person or persons shall be
 “ tried, shall, and hereby have authority to transport such
 “ person or persons, for the space of seven years, to any
 “ of his majesty’s plantations in *America*, in like manner

Penalty on
cutting down
&c. in the
night-time,
any timber
trees or roots
&c. in inclosed
ground, &c.

“ as

“ as other felons are directed to be transported by the laws
 “ and statutes of this realm :

† *Stat. 2.* By 6. Geo. 3. c. 36. it is also enacted, “ That
 “ all and every person and persons who shall be wilfully
 “ aiding, abetting, or assisting in such plucking up,
 “ digging up, cutting, breaking, spoiling, or destroying,
 “ or carrying away, such root, shrub, or plant, roots,
 “ shrubs, or plants, as aforesaid, of the value aforesaid ;
 “ or who shall buy or receive such root shrub, or plant,
 “ roots, shrubs, or plants, of the value aforesaid, knowing
 “ the same to be stolen ; shall be subject and liable to
 “ the same punishment, as if he, she, or they, had stolen
 “ the same ; any law to the contrary in any wise notwith-
 “ standing.”

Persons con-
 victed of
 plucking up,
 &c. any root,
 &c. out of pri-
 vate cultivated
 ground, for-
 feited, &c.

† *Stat. 3.* By 6. Geo. 3. c. 48. s. 3. it is recited, that
 “ many idle and disorderly persons have, of late years,
 made a practice of plucking or digging up, cutting, spoil-
 ing, or destroying, and taking or carrying away, divers and
 fundry sorts of roots, shrubs, and plants, (many of which
 are of great value) out of the fields, nurseries, gardens, and
 garden grounds, and other cultivated lands of divers of his
 majesty’s subjects ;” it is therefore enacted, “ That all and every
 “ person who shall pluck up, or cut, spoil, or destroy, or
 “ take, or carry away, any root, shrub, or plant, roots,
 “ shrubs, or plants, out of the fields, nurseries, gardens,
 “ or garden grounds, or other cultivated lands, of any
 “ person or persons whomsoever, without the consent of
 “ the owner or owners thereof first had and obtained,
 “ and shall be thereof convicted upon the oath of one or
 “ more credible witness or witnesses, before any one or
 “ more justice or justices of the peace for the county,
 “ city, riding, division, district or place, wherein such of-
 “ fence shall have been committed, shall, for the first of-
 “ fence, forfeit and pay such sum or sums of money as
 “ to such justice or justices shall seem meet, not exceed-
 “ ing forty shillings, together with the charges previous
 “ to and attending such conviction, to be ascertained by
 “ such justice or justices who shall convict the said of-
 “ fender ; and if any person so convicted shall again commit
 “ the like offence, and shall be thereof convicted in manner
 “ aforesaid, such person and persons being so convicted,
 “ shall, for such second offence, forfeit and pay such sum of
 “ money as to the said justice or justices shall seem meet,
 “ not exceeding five pounds, together with the charges pre-
 “ vious to and attending the conviction of such offender ;
 “ and if any person so before convicted, shall a third time
 “ commit the like offence, and shall be thereof convicted,
 “ such

“ such person so convicted shall, for such third offence, be
 “ deemed guilty of felony, and the Court, before whom
 “ such person shall be tried, shall and hereby hath authority
 “ to transport such person, for the space of seven years, to
 “ any of his majesty’s plantations in *America*, in like man-
 “ ner as other felons are directed to be transported by the
 “ laws and statutes of this realm.”

† *Sect. 4.* It is settled, that this latter statute, although it
 make the offender liable only to pecuniary penalties for the
 first and second offence, does not repeal the 6. Geo. 3. c. 36.
 but that they are *in pari materiâ* for the protection of shrubs
 under the different situations described. Howe’s Case,
Cafes Cro.
Law 378.

† *Sect. 5.* It has been decided on these statutes, that
 6. Geo. 3. c. 36. applies only to the offence of stealing or
 destroying shrubs in the night-time, be their value to what
 amount it may. Howe’s Case,
Cafes Cro.
Law 378.

† *Sect. 6.* It is also said, that the 6. Geo. 3. c. 48. was
 intended to protect roots, shrubs and plants, both by *day* and
night. Cafes Cro.
Law 378.

† *Sect. 7.* It has been agreed, that “*sweet bay trees*” are
 “ shrubs within the meaning of these statutes.

CHAPTER THE FORTY-FIFTH

CONTINUED.

O F

STEALING VEGETABLES.

Persons steal-
ing turnips,
cabbages, &c.
from any gar-
den, &c. shall
forfeit 10s. on
conviction, be-
side the value
of the goods
stolen.

† *Sect. 1.* BY 13. Geo. 3. c. 32. it is enacted, “ That if
“ any person shall steal and take away, or
“ maliciously pull up or destroy, any turnips, potatoes,
“ cabbages, parsnips, pease, or carrots, growing or being in
“ any garden, lands, or grounds, open or inclosed, and
“ shall be thereof convicted before any justice or justices of
“ the peace for the county or place where the offence shall
“ be committed, either by the confession of the party of-
“ fending, or by the oath of one or more credible witness
“ or witnesses (which oath such justice or justices is and
“ are hereby empowered to administer), every person so of-
“ fending, and being convicted as aforesaid, shall forfeit and
“ pay, upon such conviction, such sum of money not ex-
“ ceeding the sum of ten shillings, over and above the va-
“ lue of the goods stolen, as to such justice or justices shall
“ seem meet; which sum of money shall be distributed
“ between the owner of such turnips, potatoes, cabbages,
“ parsnips, pease, or carrots, and the overseers of the poor,
“ or other persons having the charge and disposal of the
“ funds of the poor of such parish or place where the of-
“ fence shall be committed, for the use of the poor of such
“ parish or place, in such proportion as such justice or jus-
“ tices shall think fit; or the whole of such sums shall be
“ given to the owner of such turnips, potatoes, cabbages,
“ parsnips, pease, or carrots, or to the overseers of the poor,
“ or other persons having the charge and disposal of the
“ funds for the use of the poor of such parish or place according
“ to the discretion of such justice or justices: And in de-
“ fault of payment of such penalty, of which the offender
“ hath been convicted as aforesaid, such justice or justices
“ shall and may commit such offender to the house of
“ correction, there to be kept to hard labour for any time
“ not exceeding one calendar month, unless such penalty
“ shall be sooner paid or satisfied: And if the offence is
“ committed in that part of *Great Britain* called *Scotland*,
“ such justice or justices shall and may commit such of-
“ fender

“ fender to prison, there to remain for any time not exceeding one calendar month, unless such penalty shall be sooner paid or satisfied: And the bringing of the offender or offenders before such justice or justices of the peace may be done, and the proceedings against offenders, under the authority of this act, may be carried on, in the most summary manner.”

† *Sec. 2.* By 13. Geo. 3. c. 32. f. 2. And for the more easy conviction of persons offending against this act, it is further enacted, “ That in all informations, and other proceedings for any of the offences aforesaid, the evidence of the owner or owners of such turnips, potatoes, cabbages, parsnips, pease, or carrots, and of the inhabitants of the parish or place where the offence shall be committed, shall be taken and allowed; any law, custom, rule, order, or usage, to the contrary notwithstanding.”

Informations of owners to be taken and allowed.

† *Sec. 3.* But by 13. Geo. 3. c. 32. f. 3. it is provided, “ That where any such conviction shall be upon the oath of the owner or owners, the whole of the penalty or forfeiture shall be paid to the overseer or overseers of the poor for the parish or place where the offence shall be committed, for the use of the poor of such parish or place.”

CHAPTER THE FORTY-FIFTH

CONTINUED.

OF

DESTROYING MADDER ROOTS.

Persons convicted of stealing or destroying madder roots, are, for the first offence, to make satisfaction for the damage; and pay to the overseers of the poor of the parish, a fine not exceeding 10s. &c.

† *Sect. 1.* **BY** 31. Geo. 2. c. 35. f. 5. IT IS RECITED, "that the growth and cultivation of madder is of great consequence to the trade and manufactures of this kingdom:" therefore for preventing the stealing or destroying of madder roots, IT IS ENACTED, "That if any person or persons shall steal and take away, or wilfully and maliciously pull up or destroy any madder roots growing or being in any lands or grounds belonging to any person or persons, and shall be thereof convicted before any justice or justices of the peace of the county, town, or place, where the offence shall be committed, either by confession of the party offending, or by the oath of any credible witness or witnesses (which oath such justice or justices is and are hereby authorized and empowered to administer) every person so offending, and being convicted of such offence in manner herein-before mentioned, shall, for the first offence, give and pay to the owner or owners of the madder roots so stolen, pulled up or destroyed, such satisfaction for his or their damage thereby sustained, and within such time, as the said justice or justices shall appoint; and shall over and above pay down upon such conviction unto the overseers of the poor of the parish where the offence or offences was or were committed, for the use of the said poor, such sum of money not exceeding ten shillings, as to the said justice or justices shall seem meet; and if any such offender or offenders shall not make such recompence or satisfaction to the said owner or owners, and also pay such sum to the use of the poor, in manner and form aforesaid; then the said justice or justices shall and may commit such offender or offenders to the house of correction, for any space not exceeding one month; or shall and may order such offender or offenders to be whipped by the constable, or other officer, as to the said justice or justices shall seem meet; and if
" any

“ such person or persons shall again commit the like offence, and be thereof convicted as aforesaid, then he, she, or they so offending the second time, and being thereof convicted as aforesaid, shall be committed to the house of correction for three months.”

† *Stat. 2.* By 31. Geo. 2. c. 35. s. 6. It is provided, Prosecution
 “ That no person or persons shall be prosecuted for any to be within
 “ such offence of stealing, pulling up or destroying of mad- thirty days
 “ der roots, unless such prosecution be begun within thirty after the offence.
 “ days after the offence committed.”

CHAPTER THE FORTY-FIFTH

CONTINUED.

Q F

BREAKING INTO LEAD MINES.

† *Sect. 1.* BY 25. Geo. 2. c. 10. s. 1. it is recited, "That by experience it hath been found, that wad or black cawke, commonly called *black lead*, is and hath been necessary for divers useful purposes, and more particularly in the casting bomb shells, round shot, and cannon balls; and that such wad, black cawke, or *black lead*, hath hitherto been discovered in one mountain, or ridge of hills, only in this realm; and that great waste and destruction therein hath of late years been made by wicked and evil-disposed persons, who, by reason of the situation of the mine or mines, wad-hole or wad-holes of the said wad, black cawke, or black lead, and of the great difficulty to secure and preserve the same from being unlawfully broke, or by force entered into; and also by reason of the small punishment by the laws now in being, annexed to offences of the like kind, have been encouraged unlawfully to enter, and by force to keep possession of the same; and from thence unlawfully to take and carry away great quantities of the said wad, black cawke, or black lead; for the more effectual security of all and every mine or mines, wad-hole or wad-holes of wad or black cawke, commonly called black lead; and for preventing the unlawful breaking and entering into the same; or the unlawful taking and carrying away from such mine or mines, wad-hole or wad-holes, any wad, black cawke, or black lead; and for punishing such offenders in a more exemplary manner, than by the laws in being can now be done," it is enacted, "That all and every person or persons that shall unlawfully break, or by force enter into any mine or mines, wad-hole or wadholes of wad or black cawke, commonly called black lead, or into any pit, shaft, adit, or vein of wad, black cawke, or black lead, with an intent to take and carry away from thence any wad, black cawke, or black lead; or shall unlawfully from thence take and carry away any wad, black cawke, or black lead, although such mine or mines, wad-hole or wad-holes, pit,

The entering
any mines of
black lead,
with intent to
steal,

" pit, shaft, adit, or vein, be not actually broke, or by
 " force entered into by such offender or offenders; or shall ^{or the assisting}
 " aid, abet, assist, hire, or command any person or persons ^{or hiring per-}
 " to commit such offence or offences as aforesaid; that then, ^{sons to do so,}
 " and in every such case, all and every such person or per- ^{felony;}
 " sons shall be deemed and construed to be guilty of felony;
 " and it shall and may be lawful for the court or judge,
 " before whom any such person or persons so offending as
 " aforesaid shall be lawfully convicted, to order such
 " offender or offenders to be committed to the prison or ^{Offenders to}
 " gaol of the said county appointed for criminals, or to ^{be committed}
 " some house of correction within the same county, for a ^{for a year, and}
 " time not exceeding one year, there to be kept to hard ^{publickly}
 " labour during all the said time, and to be publickly whipt; ^{whipt;}
 " by the common hangman, or by the master of such house
 " of correction, at such times and at such places, and in
 " such manner, as such court or judge shall think proper;
 " or it shall and may be lawful to and for such court or
 " judge, or for any other subsequent court held at the same
 " place, with the like authority as the former, to order such
 " offender or offenders to be transported to some of his ^{or to be trans-}
 " majesty's plantations beyond the seas, for a term not ex- ^{ported for}
 " ceeding seven years, as such court or judge shall think ^{seven years;}
 " most proper; and thereupon judgment shall be given,
 " that the person or persons so convicted shall be com-
 " mitted and whipt, or transported accordingly; and if
 " transportation shall be directed, the same shall be exe-
 " cuted in such manner as is or shall be provided by law
 " for the transportation of felons; and if any such person
 " or persons so committed or transported shall voluntarily
 " escape or break prison, or return from transportation ^{and if they es-}
 " before the expiration of the time for which he, she, or ^{cape from pri-}
 " they shall be ordered to be transported as aforesaid, such ^{son, or return}
 " person or persons being thereof lawfully convicted, shall ^{from trans-}
 " suffer death as a felon without benefit of clergy, and ^{portation, to}
 " shall be tried for such felony in the county where he, she, ^{suffer death;}
 " or they so escaped, or where he, she, or they shall be ap-
 " prehended."

† *Stat. 2.* By 25. Geo. 2. c. 10. s. 2. it is further enacted, and a certifi-
 " That if any person shall be convicted or attainted of any ^{cate of the for-}
 " of the offences aforesaid, and shall voluntarily escape, ^{mer con-}
 " break prison, or return from transportation as aforesaid, ^{viction deem-}
 " and shall be apprehended in any other county or city ^{ed sufficient}
 " different from that wherein the said offence was com-
 " mitted, the clerk of the assize, or clerk of the peace for
 " the county or city where such conviction or attainder for
 " the said offence or offences was had, shall, at the request
 " of the prosecutor, or of any other on his majesty's be-
 " half,

“ half, certify the same by a transcript in few words, containing the effect and tenor of such conviction or attainder, for which certificate two shillings and six-pence and no more shall be paid; and such certificate being produced in court shall be sufficient proof of such former conviction or attainder.”

Receivers of
lead, knowing
such to be
stolen, guilty
of felony.

† *Stat. 3.* By 25. Geo. 2. c. 10. s. 3. it is further enacted,
“ That all and every person or persons who shall buy or
“ receive any wad or black cawke, commonly called black
“ lead, knowing the same to be so unlawfully taken and
“ carried away as aforesaid, shall be deemed and construed
“ to be guilty of felony, and being convicted thereof, shall
“ be subject and liable to all the pains and penalties which
“ any person or persons can or may by the laws and statutes
“ of this realm be subject and liable to, for buying or re-
“ ceiving any goods or chattels that have been feloniously
“ taken or stolen, knowing the same to have been stolen.”

CHAPTER THE FORTY-FIFTH

CONTINUED.

STEALING

LEAD OR IRON,

AND

COPPER, BRASS, OR BELL-METAL,

AFFIXED TO A DWELLING-HOUSE.

† *Stat.* 1. **BY** 4. Geo. 2. c. 32. IT IS RECITED, "That the pernicious practice of stealing lead, iron bars, iron gates, iron palisadoes, and iron rails, fixed to dwelling-houses, out-houses, coach-houses, stables, and other buildings, and fixed in gardens, orchards, court-yards, fences, and outlets, belonging to dwelling-houses and other buildings, hath of late time been much used, to the great detriment of his majesty's subjects; and it is necessary, for the more effectual preventing of such offences, to inflict a more exemplary punishment on such offenders, than by the laws of this realm can now be done;" AND IT IS ENACTED, "That
 " all and every person and persons who shall steal, rip, cut,
 " or break, with intent to steal, any lead, iron bar, iron
 " gate, iron palisadoe, or iron rail whatsoever, being fixed
 " to any dwelling-house, out-house, coach-house, stable, or
 " other building used or occupied with such dwelling-
 " house, or thereunto belonging, or to any other building
 " whatsoever, or fixed in any garden, orchard, court-yard,
 " fence, or outlet, belonging to any dwelling-house or other
 " building, shall be deemed and construed to be guilty of
 " felony; and every such felon and felons shall be subject
 " and liable to the like pains and penalties as in cases of
 " felony; and the court, by and before whom such person
 " or persons shall be tried, shall, and hereby have power and
 " authority to transport such felons for the space of seven
 " years, in like manner as other felons are directed to be
 " transported by the laws and statutes of this realm; and
 " all and every person and persons who shall be aiding,
 " abetting, or assisting in stealing, or in such ripping, cut-
 " ting,

Stealers of
lead, iron bars,
&c. fixed to
houses, or any
fences belong-
ing thereto,
shall be guilty
of felony,
and be trans-
ported for
seven years.

“ting, or breaking any lead, iron bar, iron gate, iron palisadoe, or iron rail, fixed to any dwelling-house, out-house, coach-house, stable, or other building, or fixed in any garden, orchard, court-yard, fence, or outlet, belonging to any dwelling-house or other building, or who shall buy or receive any such lead, iron bar, iron gate, iron palisadoe, or iron rail, knowing the same to be stolen, shall be subject and liable to the same punishments as if he, she, or they had stolen the same; any law to the contrary in anywise notwithstanding.”

All persons who shall steal, &c. any copper, &c. fixed to any dwelling-house, &c. shall be deemed guilty of felony, and may be transported for seven years, &c.

+ *Sec. 2.* By 21. Geo. 3. c. 68. it is enacted, “That all and every person and persons who shall steal, rip, cut, break, or remove, with intent to steal, any copper, brads, bell-metal, utensil, or fixture, being fixed to any dwelling-house, out-house, coach-house, stable, or other building, used or occupied with such dwelling-house, or thereunto belonging, or to any other building whatsoever, or fixed in any garden, orchard, court-yard, fence, or outlet, belonging to any dwelling-house, or other building, or any iron rails or fencing set up or fixed in any square, court, or other place (such person having no title or claim of title thereto), shall be deemed and construed to be guilty of felony; and the court, by and before whom such person or persons shall be tried and convicted, shall, and hereby have power and authority to transport such felons for the term of seven years, in like manner as other felons are directed to be transported by the laws and statutes of this realm; or to order and direct that such offender be kept and detained in prison, and therein kept to hard labour for any time not exceeding three years, nor less than one year; and within that time, if such court shall think fit, such offender shall be once, or oftener, but not more than three times, publicly whipped.”

All persons assisting, or who shall buy, liable to same punishments.

+ *Sec. 3.* By 21. Geo. 3. c. 68. it is further enacted, “That all and every person and persons who shall be aiding, abetting, or assisting, in stealing, or in such ripping, cutting, breaking, or removing any copper, brads, bell-metal, utensil, or fixture, fixed to any dwelling-house, out-house, coach-house, stable, or other building, or fixed in any garden, orchard, court-yard, fence, or outlet, belonging to any dwelling-house, or other building, or any iron rails, or fencing, set up or fixed in any square, court, or other place; or who shall buy or receive any such copper, brads, bell-metal, utensil, or fixture, iron rails, or fencing, knowing the same to be stolen, shall be subject and liable to all and every the same punishments, pains, and penalties, as if he, she, or they, had stolen the same.”

“ same, although the principal felon or felons has not or
 “ have not been convicted of stealing the same; any law to
 “ the contrary in anywise notwithstanding.”

† *Señ. 4.* It is clear, that these statutes create a *new* felony, and therefore the indictment must state whatever the statute makes constituent parts of the offence, and conclude *contra formam statuti*. Rex v. T. Josling, O.B. July Session, 1784, coram ADAIR, Recorder.

† *Señ. 5.* It seems also, that as the Legislature has created a new felony, it partakes of course of all those qualities which are incidental to a felony at common law, and therefore that the indictment must affix a value to the property stolen, in order that it may appear either grand or petit larceny. Josling's Case, ubi supra.

† *Señ. 6.* But it has been said, that an offender against this statute cannot be rendered guilty of a *capital offence*, by stating that he “ *burglariously* broke and entered the dwelling-house in the night-time, and then and there stole such a quantity of lead, iron, &c. the same being fixed to the said dwelling-house, &c.” for the Legislature has described the offence, and limited the punishment. *Sed quære.* By GLYN, Recorder, in the case of James Carragon, O. B. in the year 1772.

† *Señ. 7.* It hath been ruled, on an indictment for stealing “ iron window sashes,” that if it appear that the window frames from which the sashes were taken were fixed into their proper places, but that the sashes were neither hung nor beaded in the frames, but merely fastened in by laths nailed across the frames, to prevent their falling out, they are not fixed to the freehold within the meaning of these statutes. Hedges' Case, O. B. May Seff. 1779, coram WILLES, Justice.

† *Señ. 8.* So also it has been held, that “ a wooden gate, with an iron spring latch and clasp, and two pieces of iron, called upper eyes, which may be lifted on and off the hooks of the gate-post at pleasure,” is not a fixture to the freehold. Challis's Case, Essex Lent Assizes, 1784, coram GOULD, Justice.

† *Señ. 9.* It has also been repeatedly ruled, that a window casement, made of iron, lead, and glass, is not within these statutes; for the words, “ lead, iron bar, iron grate, iron palisadoe, iron rail, or copper, brass, or bell-metal utensil,” are to be taken as *substantive nouns*, and not as *adjectives*, describing the qualities of the things mentioned; and therefore, as a *casement* is not among the things enumerated, it is not within the statutes. Senior's Case, Cafes C. L. 394.

Breefe's Case, † *Seff.* 10. So also it has been held, that a stock-lock, which is a lock with iron-work wards in a wooden frame, is not within these statutes.
O. B. Feb. *Seff.* 1785.

Jof. Hick- † *Seff.* 11. It has been decided, that "*a church*" is man's Case, "*a building*" within the meaning of these statutes; and that O. B. May an indictment for stealing lead affixed thereto, is good, although it do not mention the person in whom the freehold *Seff.* 1786, to which the property taken was affixed, resided.
on a case re- served for the Judges.
opinion of the

Clarke's Case, † *Seff.* 12. But it has been held, that *an observatory* placed in the middle of a gentleman's garden grounds, is not "*a building used and occupied with a dwelling-house*" within the meaning of these statutes.
O. B. Feb. *Seff.* 1781.

Marney's *Seff.* 13. It has also been held, that an iron bar affixed Case, O. B. to the copper-hole of a hot-house or green-house, in a June *Seff.* garden, is within these statutes.
1785, *coram*
HEATH, Justice.

The case of † *Seff.* 14. But it has been held, that an iron grate Brown and fixed to the ground, over the mouth of a sewer, in the Stephens, middle of a public highway, and not belonging to any building, but to the commissioners of sewers, is not within the *Seff.* 1791. statute 4. Geo. 2. c. 32.

The case of † *Seff.* 15. It has been held, that an indictment on Thomas 4. Geo. 2. c. 32. for *stealing* lead affixed to a dwelling-house, Breese, *coram* is not maintained by evidence that it was lead belonging to ADAIR, Re- a sink, and that it was only cut, ripped, and turned up, but *corder.* not taken away; but such evidence would maintain an indictment for cutting and ripping the lead with intent to steal.

CHAPTER THE FORTY-SIXTH.

OF RABBIT-KILLING.

OFFENCES relating to wild animals made felonies by statute, are such as relate,

1. To rabbits.
2. To deer.
3. To fish.

As to THE FIRST POINT, *viz.* The offence of stealing or killing rabbits.

sect. 1. By 3. Jac. 1. c. 13. f. 2. it is enacted, "That if any person or persons shall, in the night time, or by day, wrong-fully or unlawfully break or enter into any park impaled, or any other several grounds, inclosed with wall, pale, or hedge, and used or kept for the keeping, breeding, and cherishing of any conies, and wrongfully or unlawfully shall hunt, drive, or chase out, or take, kill, or slay any conies within any such impaled park, or closed ground with pale, wall, or other inclosure as aforesaid, against the will, mind, or pleasure of the owners, occupiers, or possessioners of the same, not having lawful title or authority so to do, and thereof shall be lawfully convicted at the suit of our sovereign lord the king, his heirs or successors, or the party grieved, shall suffer imprisonment of his or their bodies by the space of three months; and also shall yield and pay to the party grieved his treble damages and costs, to be assessed and rated by the justices before whom he or they shall be convicted, after the said three months expired; and shall find sufficient sureties for his and their good abearing against the king, his heirs, and successors, and all his liege people, for the space of seven years after, or else shall remain and continue still in prison without bail or mainprize, until such time as he or they so offending shall find sufficient sureties during the said time and space of seven years."

The penalty for breaking a park or warren, or for hunting of conies.
13. Car. 2. stat. 1. c. 10. Farther provided by 7. Jac. 1. c. 13. sect. 4.

† *sect. 2.* By 3. Jac. 1. c. 13. f. 3. it is further enacted, "That the justices of *oyer and terminer*, justices of assize in their circuits, and justices of peace and gaol-delivery in their sessions, shall, by virtue hereof, have power and authority to enquire, hear, and determine all and singular the said offences, by examination of the offenders, and to make and award process thereupon, as well upon indictments taken before them, as by bill of complaint, infor

What justices may hear and determine the offences aforesaid.

“ information, or any other action; in which said suit
 “ or action, no effoin, wager of law, or protection shall be
 “ allowed.”

The remedy
 of the party
 grieved.

† *Seft.* 3. By 3. Jac. 1. c. 13. f. 4. it is also enacted,
 “ That it shall and may be lawful to the party grieved, to
 “ sue and take his further remedy against all and every such
 “ offender and offenders, for his loss and damages, and to
 “ recover the treble value of the same in that behalf, as well
 “ before the justices of *oyer and terminer*, justices of assize in
 “ their circuits, and justices of the peace and gaol-delivery
 “ in their sessions, or elsewhere in any other the king’s ma-
 “ jesty’s courts of record at *Westminster*; and that upon true
 “ satisfaction of the said treble damages to the party grieved;
 “ or upon the confession or acknowledgment thereof by the
 “ said party offending, before the justices in open sessions
 “ holden for the county wherein the same offence shall be
 “ committed, it shall be at the liberty of the said party
 “ grieved, to whom the said offence is committed, to release
 “ at his pleasure the suretyship of the good behaviour, at
 “ any time within the said seven years or before; any thing
 “ in this present act before-mentioned or declared to the
 “ contrary notwithstanding.”

In what case
 the suretyship
 of the good
 behaviour
 may be re-
 leased by the
 party grieved.

Penalty for
 shooting with
 gun or bow at
 conies, or for
 keeping of
 engines, &c.

† *Seft.* 4. By 3. Jac. 1. c. 13. f. 5. it is further enacted,
 “ That if any person or persons not having any manors;
 “ lands, tenements, or hereditaments, of the clear yearly
 “ value of forty pounds, or not worth in goods or chattels
 “ the sum of two hundred pounds, shall use any gun,
 “ bow, or cross-bow, to kill any conies, or shall keep
 “ any engine-hayes, gate-nets, purse-nets, ferrets, or
 “ coney-dogs, except such person or persons as shall have
 “ any ground imparked with pale, or inclosed with wall or
 “ hedge as aforesaid, used for the keeping, breeding, or
 “ cherishing of any conies, the increasing of which said
 “ conies shall amount to the clear yearly value of forty
 “ shillings, to be letten at the least, or keepers or warreners
 “ in their parks, warrens, or grounds belonging to their
 “ charge; that then any person having lands, tenements,
 “ or hereditaments, of the clear yearly value of one hundred
 “ pounds in fee-simple, fee-tail, or for life, in his own
 “ right, or in the right of his wife, may take from the per-
 “ son or possession of such malefactor or malefactors, and to his
 “ own use for ever keep, such guns, bows, cross-bows, or en-
 “ gine-hayes, gate-nets, purse-nets, ferrets, and coney-dogs.”

In what case
 the justices
 may discharge
 the suitor of
 good abearing

† *Seft.* 5. By 3. Jac. 1. c. 13. f. 6. it is further enacted,
 “ That if any person or persons, at any time hereafter,
 “ shall fortune to be bound before any the justices before-
 “ mentioned, to the king, his heirs or successors, for his or
 “ their good abearing for seven years, according to the tenor
 “ of

“ of this act, and the same party or parties so bound shall
 “ afterward, within the said seven years, come before the
 “ justices of the peace of the said county where the said
 “ offence was committed, or some of them, in open quar-
 “ ter-sessions, and there in the said sessions confess and
 “ acknowledge his or their said offence or offences, and that
 “ he or they is or are sorry therefor, and satisfy the party
 “ or parties grieved, according to the tenor of this act :
 “ that then the same justices before whom the said con-
 “ fession shall be so made, shall and may have power and
 “ authority by virtue of this act, in the same open sessions,
 “ or in any other sessions afterwards to be holden before
 “ the said justices in the said county, within the said term
 “ of seven years, if it shall seem good to their discretions,
 “ to discharge the said recognizance and bond so taken, and
 “ also the said party and parties so bound ; this act, or any
 “ thing therein contained, to the contrary thereof notwith-
 “ standing.”

† *Seet.* 6. By 3. Jac. 1. c. 13. f. 7. it is provided, “ That
 “ this act, or any thing herein contained, do not extend to
 “ any park or inclosed ground hereafter to be made and
 “ used for conies, without the grant or licence of our sove-
 “ reign lord the king, his heirs or successors.”

† *Seet.* 7. By 3. Jac. 1. c. 13. f. 8. it is further provided,
 “ That this act, nor any therein contained, shall extend to
 “ any offence or offences concerning the hunting, chasing,
 “ or killing of conies, which shall be done or committed in
 “ the day-time, but only to such offences as shall be here-
 “ after done or committed in the night-time only; any
 “ thing in this act contained to the contrary thereof not-
 “ withstanding.”

† *Seet.* 8. By 22. and 23. Car. 2. c. 25. f. 4. IT IS RE- No person
 CITED, “ That divers warrens and grounds, not inclosed, shall kill con-
 “ are used for the breeding and keeping of conies in several nies in a war-
 “ parts of this kingdom, and that sundry dissolute and disorderly persons have been much encouraged to kill and destroy
 “ the conies in such warrens and grounds not inclosed, in the ren not in-
 “ the night-time, for that the same is not prohibited or punishable closed.
 “ by the statutes in that behalf made and provided, which
 “ extend only to the stealing and killing of conies in warrens
 “ or grounds inclosed.” AND ENACTED, “ That if any per-
 “ son or persons shall at any time enter wrongfully into any
 “ warren or ground lawfully used or kept for the breeding
 “ or keeping of conies (although the same be not inclosed),
 “ and there shall chase, take, or kill any conies against the
 “ will of the owner or occupier thereof, not having lawful
 “ title or authority so to do, and shall be thereof lawfully
 “ con-

Forfeiture.

“ convicted in manner hereafter following, the parties so
 “ offending shall yield to the party grieved treble damages
 “ and costs, and suffer imprisonment by the space of three
 “ months, and after, till they shall find sureties for their
 “ good abearing.”

No person
 shall in the
 night kill any
 conies on the
 borders of any
 warrens, ex-
 cept the owner
 of the ground.

† *Señ.* 9. By 22. and 23. Car. 2. c. 25. f. 5. IT IS RE-
 CITED, “ That divers idle and disorderly persons living
 near unto warrens, have of late time used to kill and take
 the conies upon the borders of the same, and, under colour
 thereof, do oft-time enter into the said warrens, and there
 take and kill conies in the night-time, when they cannot
 easily be discovered :” AND ENACTED, “ That no person or
 “ persons shall at any time hereafter kill or take in the
 “ night-time any conies upon the borders of any warrens,
 “ or other grounds lawfully used for the breeding or keep-
 “ ing of conies, excepting only such person or persons as
 “ shall be owner of the soil, or lawful occupier or possessor
 “ of the ground, or any person or persons employed by
 “ him, her, or them, whereupon such conies shall be so
 “ killed or taken, upon pain that every person so offending,
 “ and being thereof lawfully convicted in manner hereafter
 “ following, shall give the party or parties injured, such
 “ recompence or satisfaction for his or their damages, and
 “ within such time as shall be appointed by the justice be-
 “ fore whom such offender shall be convicted, and over and
 “ above pay down presently unto the overseers, for the use
 “ of the poor of the parish where such offence shall be com-
 “ mitted, such sum of money, not exceeding ten shillings,
 “ as the said justice shall think meet : and if such offender
 “ or offenders do not make recompence or satisfaction to
 “ the said party or parties injured, and also pay the said sum
 “ to the poor in manner and form aforesaid, then the said
 “ justice shall commit the said offender or offenders to the
 “ house of correction for such time as the said justice shall
 “ think fit, not exceeding one month.”

The penalty.

Imprison-
ment.

Felony.

† *Señ.* 10. By 9. Geo. 1. c. 22. “ If any person or per-
 “ sons, being armed with swords, fire-arms, or other offen-
 “ sive weapons, and having his or their faces blacked, or
 “ being otherwise disguised, shall appear in any forest,
 “ chace, park, paddock, or grounds inclosed with any wall,
 “ pale, or other fence, or in any warren or place where co-
 “ nies have been or shall be usually kept, or shall unlawfully
 “ rob any warren or place where conies are usually kept ;
 “ or shall forcibly rescue any person, being lawfully in cus-
 “ tody of any officer or other person, for any of the offences
 “ above-mentioned; or if any person or persons shall, by
 “ gift or promise of money or other reward, procure any
 “ of

* Of his majesty's subjects to join him or them in any such
 " unlawful act, every person so offending shall suffer death
 " without benefit of clergy."

† *Sect. 11.* By 5. Geo. 3. c. 14. f. 6. IT IS RECITED, Persons con-
 " That there are many thousand acres of land in this king-
 dom altogether unfit for cultivation, and yet the same are
 capable of rendering great profit, by the breeding and main-
 taining conies; as well to the owners of such lands, as to a
 multitude of industrious manufacturers, who gain their live-
 lihood by working up coney wool; and that a great part of
 the said land is already used as warrens, in the breeding and
 maintaining conies; but because divers disorderly persons,
 neglecting their own lawful trades, have betaken themselves
 to the taking, killing, and stealing of conies in the night-
 time, whereby the owners and occupiers of such warrens are
 greatly discouraged, and many such owners and occupiers
 have been induced to destroy such warrens, and others have
 been deterred from stocking other lands, to the great pre-
 judice of the manufactures of this kingdom; and that the
 provisions already subsisting have, by experience, been
 found insufficient for the effectual preservation of conies in
 warrens;" AND ENACTED, "That if any person or persons
 " shall wilfully and wrongfully, in the night-time, enter
 " into any warren or grounds lawfully used or kept for the
 " breeding or keeping of conies, although the same be not
 " inclosed, and shall then and there wilfully and wrongfully
 " take or kill, in the night-time, any coney or conies, against
 " the will of the owner or occupier thereof, or shall be aid-
 " ing and assisting therein, and shall be convicted of the
 " same before any of his majesty's justices of *oyer and ter-*
 " *miner*, or general gaol delivery, for the county where such
 " offence or offences shall be committed; every such person
 " and persons so offending, and being thereof lawfully con-
 " victed in manner aforesaid, shall and may be transported
 " for the space of seven years, or suffer such other lesser
 " punishment by whipping, fine, or imprisonment, as the
 " Court, before whom such person or persons shall be tried,
 " shall, in their discretion, award and direct."

† *Sect. 12.* By 5. Geo. 3. c. 14. f. 7. it is provided,
 " That no person who shall be convicted of any offence
 " against this act, shall be liable to be convicted for any such
 " offence under any former act or acts, law or laws, now
 " in force."

† *Sect. 13.* By 5. Geo. 3. c. 14. f. 8. IT IS RECITED,
 " That great mischief and damage had been, and still may
 be occasioned by the increase of conies upon the sea and
 Vol. I. B b river

Act not to extend to destroying conies in the day-time, in Lincoln, &c.

river banks in the county of *Lincoln*, or upon the land or ground within a certain distance from the said banks ;”
 AND ENACTED, “ That nothing in this act contained shall
 “ extend, or be construed to extend, to prevent any person
 “ or persons from killing and destroying, or from taking
 “ and carrying away, in the day-time, any conies that shall
 “ be found on any sea or river banks, erected or to be
 “ erected for the preservation of the adjoining lands from
 “ being overflowed by the sea or river waters, so far as the
 “ flux and reflux of the tide does or shall extend, or upon
 “ any land or ground within one furlong distance of such
 “ sea or river banks, so far as the flux and reflux of the
 “ tide does or shall extend, or upon any land or ground
 “ within one furlong distance of such sea or river banks ;
 “ but that it shall and may be lawful to and for any person
 “ or persons to enter upon any such banks, land, or ground,
 “ as aforesaid, within the said county of *Lincoln*, and to
 “ kill, destroy, take, and carry away, in the day-time, to
 “ his or their own use, any conies so found upon any such
 “ banks, land, or ground, as aforesaid, within the said
 “ county; he or they doing as little damage as may be to
 “ the owner or tenant of such banks, land, or ground ;
 “ any thing in this or any other act contained to the contrary notwithstanding.”

† *Señ. 14.* By 5. Geo. 3. c. 14. f. 9. it is also provided,
 “ That no person or persons shall be obliged to make satisfaction for any damages that may be occasioned by such entry, unless such damages shall exceed the sum of one shilling.”

CHAPTER THE FORTY-SIXTH

CONTINUED.

O F

D E E R - S T E A L I N G.

† *Sec. 1.* **BY** 9 Geo. 1. c. 22. “If any person or persons, being
 “ armed with swords, fire-arms, or other off n-
 “ five weapons, and having his or their faces blacked, or be-
 “ ing otherwise disguised, shall appear in any forest, chase,
 “ park, paddock, or grounds inclosed with any wall, pale,
 “ or other fence, wherein any deer have been or shall be
 “ usually kept, or shall unlawfully and wilfully hunt,
 “ wound, kill, destroy, or steal any red or fallow deer: or
 “ if any person or persons (whether armed and disguised
 “ or not) shall unlawfully and wilfully hunt, wound, kill,
 “ destroy, or steal any red or fallow deer, fed or kept in
 “ any places in any of the king’s forests or chases which
 “ are or shall be inclosed with pales, rails, or other fences;
 “ or in any park, paddock, or grounds inclosed, where
 “ deer have been or shall be usually kept; or shall forc-
 “ bly rescue any person, being lawfully in custody of any
 “ officer or other person, for any the said offences; or
 “ shall by gift or promise of money, or other reward,
 “ procure any to join him or them in any such unlawful
 “ act: every person so offending, being thereof lawfully
 “ convicted (in any county in *England*) shall be guilty
 “ of felony without benefit of clergy; but not to work
 “ corruption of blood, nor forfeiture of lands or goods.”

† *Sec. 2.* By 16. Geo. 3 c. 30 IT IS RECITED, “that
 the statutes now in force for the discovery and punishment
 of deer-stealer: are numerous, and many of them ineffectual:
 And whereas the good purposes thereby intended might be
 better effected, if such of the said statutes as are found to be
 defective were repealed, and such good provisions as are
 therein contained, together with such further provisions as
 may be expedient, were reduced into one act;” and there-
 fore ENACTED, “That if any person or persons shall course
 “ or hunt, or shall take in any slip, noose, toyle, or
 B b 2 “ share,

Penalty on
any persons
who shall
hunt, &c. any
fallow deer,
in any forest,
&c.

“ snare, or shall kill, wound, or destroy, or shall shoot at,
“ or otherwise attempt to kill, wound, or destroy, or shall
“ carry away, any red or fallow deer, in any forest, chase,
“ purlieu, or ancient walk, whether inclosed or not, or in
“ any inclosed park, paddock, wood, or other inclosed
“ ground, where deer are, have been, or shall be usually
“ kept, without the consent of the owner, or without be-
“ ing otherwise duly authorised, or shall be aiding, abet-
“ ting, or assisting therein or thereunto, every person so
“ offending, by coursing, hunting, shooting at, or other-
“ wise attempting to kill, wound, or destroy, or by aiding
“ therein, or thereunto, shall forfeit, for every such of-
“ fence, the sum of twenty pounds; and every person so of-
“ fending by killing, wounding, or destroying, or by
“ taking in any slip, noose, toyle, or snare, or by carry-
“ ing away, or by aiding therein respectively, shall, for
“ every deer so wounded, killed, destroyed, taken or car-
“ ried away, forfeit and pay the sum of thirty pounds;
“ and if the offender in any of the cases aforesaid shall be a
“ keeper of, or person in any manner intrusted with the
“ custody or care of deer, in the forest, chase, purlieu,
“ ancient walk, or inclosed park, paddock, or wood, or
“ other inclosed place, where the offence shall be com-
“ mitted, every such offender shall forfeit and pay double
“ the penalty herein-before appointed to be paid by other of-
“ fenders; and if any person or persons, after having
“ been convicted of any of the aforesaid offences, shall of-
“ fend a second time against this act, by committing any
“ of the aforesaid offences, such second offence, whether
“ it be the same as the first offence, or be any other of
“ the aforesaid offences, shall be deemed and adjudged to
“ be felony, and the person guilty thereof, being lawfully
“ convicted upon indictment, shall be transported to one
“ of his majesty's plantations in *America* for the space of
“ seven years.”

Persons con-
victed under
former acts,
still liable to
penalties, &c.

† *Stat. 3.* By 16. Geo. 3. c. 30. s. 2. it is further en-
acted, “ That every person who hath been, or, before the
“ commencement of this act, shall be, convicted under any
“ statute now in force, for unlawfully hunting, coursing,
“ killing, taking, or carrying away, any deer out of any
“ forest, chase, purlieu, ancient walk, park, paddock,
“ wood, or inclosed ground, shall be subject and liable to
“ the several pains and penalties by such statute provided,
“ in like manner as if this act had not been made; and in
“ case any such offender shall, after the commencement of
“ this act, be guilty and convicted of any of the aforesaid
“ offences against this act (the legal proof of such first
“ or former conviction having been first made), every
“ such

“such person shall be deemed and adjudged to have committed a second offence against this act, in like manner as if this act had been in force at the time of such first conviction, and as if such conviction had been made under the provisions of this act.”

† *Sect. 4.* By 16. Geo. 3. c. 30. f. 3. After RECITING, “To the intent that the prosecution of persons who shall offend a second time in manner aforesaid, may be carried on with as little expence and trouble as is possible,” it is further ENACTED, “That the justice before whom any person shall, after the commencement of this act, be convicted for the first time of any of the offences before described, shall transmit such conviction, under his hand and seal, to the quarter-session which next after such conviction shall be holden for the county, riding, division, city, town, or place, wherein such first offence shall be committed, there to be filed by the clerk of the peace, and to be kept amongst the records of the peace; and such conviction so filed, or a true copy thereof certified and subscribed by such clerk of the peace, shall be sufficient evidence to prove the conviction of such first offence as aforesaid.”

How j. sices
to proceed.

† *Sect. 5.* By 16. Geo. 3. c. 30. f. 4. it is further Justices may
enacted, “That it shall be lawful for any one justice of grant war-
the peace, upon complaint made to him on oath by any rant to
credible person, that there is reason to suspect any, per- search.
son or persons of having in his, her, or their custody
or possession, or in any dwelling-house, out-house, yard,
garden, or place, any red or fallow deer, which shall have
been unlawfully killed, or the head, skin, or other part
thereof, or any slip, noose, toyle, snare, or other engine,
for the unlawful taking of deer, by warrant under
his hand and seal, to cause such person and persons,
and such dwelling-house, out-house, garden, or place,
to be searched; and if any red or fallow deer suspected
to have been unlawfully killed, or the head, skin, or
other part thereof, or any slip, noose, toyle, snare, or
other engine, suspected to be used for the unlawful
taking or killing of deer, shall be found in his, her, or
their custody or possession, or in such dwelling-house,
out-house, garden, or place, to cause the same, and such
person or persons so having possession, or in whose
dwelling-house, out-house, garden, or other place, the
same shall be found, to be brought before any justice
of the peace having jurisdiction; and if such person
or persons shall not produce before such justice the party
of whom he, she, or they received the same, or satisfy
“such

“ such justice that he, she, or they came lawfully by such
 “ deer, or the head, skin, or other part thereof, or had a
 “ lawful occasion for such slip, noose, toyle, snare, or other
 “ engine, or did not keep the same for any unlawful pur-
 “ pose, then every such person shall forfeit any sum not
 “ exceeding thirty pounds, nor less than ten pounds, at the
 “ discretion of such justice.”

In case per-
 sons cannot
 be convicted,
 how justices
 to proceed.

† *Stat. 6.* By 16. Geo. 3. c. 30. s. 5. it is further en-
 acted, “ That if any red or fallow deer, suspected to have
 “ been unlawfully killed, or the head, skin, or other part
 “ of such deer shall, on a search under a warrant from any
 “ justice of the peace, be found in the possession or custody
 “ of any person or persons, or in any dwelling-house,
 “ out-house, garden, or other place, or shall be proved to
 “ have been in the possession, house, out-house, garden, or
 “ place, of any person or persons who may be justly sus-
 “ pected to have come dishonestly or unlawfully by the
 “ same as aforesaid; and such person or persons so in pos-
 “ session, or the owner or occupier of such dwelling house,
 “ out-house, garden, or other place, shall not, under the
 “ provisions aforesaid, be liable to conviction; then, and
 “ in every such case, for the discovery of the party or par-
 “ ties who actually killed or stole such deer, it shall and
 “ may be lawful to and for any justice of the peace having
 “ jurisdiction, as the evidence given and the circumstances of
 “ the case shall require, to summon before him, at his dis-
 “ cretion, every person through whose hands such deer, or
 “ the head, skin, or other part thereof so found, shall ap-
 “ pear to have passed; and if the person and persons from
 “ whom such deer, or the head, skin, or other part thereof,
 “ shall appear to have been first received, or who having
 “ had possession thereof, shall not give proof, to the satis-
 “ faction of such justice, that he, she, or they came lawfully
 “ by the same, such person or persons shall, on every con-
 “ viction, forfeit and pay any sum not exceeding thirty
 “ pounds, nor less than ten pounds, at the discretion of
 “ such justice.”

Suspected
 persons, &c.

† *Stat. 7.* By 16. Geo. 3. c. 30. s. 6. it is further en-
 acted, “ That in case it shall appear, on the oath of a cre-
 “ dible witness, that any person or persons hath or have
 “ had in his, her, or their possession, house, out-house,
 “ garden, or place, any red or fallow deer, or the skin,
 “ head, or other part thereof, and shall be reasonably sus-
 “ pected to have come dishonestly or unlawfully thereby,
 “ then, and in every such case, every such person or per-
 “ sons, and all other persons through whose hands the
 “ same shall appear to have passed under the like suspicion,
 “ shall

“ shall and may be proceeded against in like manner and form, and on conviction shall be subject and liable to the same penalty or penalties, as if such deer, or the head, skin, or other part thereof, had been found in the possession, house, out-house, garden, or place, of such person or persons, upon a search made under and by virtue of any such warrant as afore said.”

+ Sect. 8. By 16. Geo. 3. c. 30. s. 7. it is further enacted, “ That in case any person or persons shall set, lay, or use, any net, wire, slip, noose, toyle, or other engine, for the purpose of taking or killing deer, within or upon any forest, chase, purlieu, or ancient walk, or in the ring, or outer fence or bank dividing the same from the adjoining lands ; or in any inclosed park, paddock, wood, or ground, where deer are, have been, or shall be usually kept, such person or persons, not being the owner of such forest, chase, purlieu, ancient walk, park, paddock, wood, or ground, or entrusted with the care of the deer within the same, and shall be convicted of any of such offences, every such offender shall forfeit and pay, for the first offence, any sum not exceeding ten pounds, nor less than five pounds; and if afterwards convicted of any of the offences last mentioned, shall, on every conviction after the first, forfeit and pay any sum not exceeding twenty pounds, nor less than ten pounds ; which said respective forfeitures shall be set at the discretion of the justice or justices before whom the offender or offenders shall be convicted of such first or further offence.” Penalty on setting nets; &c.

+ Sect. 9. By 16. Geo. 3. c. 30. s. 8. it is further enacted, “ That if any person or persons shall at any time wilfully pull down or destroy, or cause to be wilfully pulled down, or destroyed, the pale or pales, or any part of the walls of any forest, chase, purlieu, ancient walk, park, paddock, wood, or other ground, where any red or fallow deer shall be then kept, without the consent of the owner or person chiefly intrusted with the custody thereof, or being otherwise duly authorised, every person so offending shall be subject unto the forfeiture and penalty hereby inflicted for the first offence of killing of any deer.” Penalty on pulling down pales, &c.

+ Sect. 10. By 16. Geo. 3. c. 30. s. 9. it is further enacted, “ That if any person or persons carrying any gun, or other fire-arms, or any sword, staff, or other offensive weapon, shall come into any forest, chase, purlieu, or ancient walk, or into any inclosed park, paddock, or dock,

“dock, wood, or into any other ground where deer are
 “usually kept, be the same inclosed or not inclosed, with
 “an intent unlawfully to shoot at, course, or hunt, or to
 “take in any slip, noose, toyle, snare, or other engine,
 “or to kill, wound, destroy, or take away any red or fallow
 “deer, it shall be lawful for every ranger or keeper,
 “or person intrusted with the care of such deer, to seize
 “and take from such person and persons, in and upon
 “such forest, chase, purlieu, ancient walk, park, paddock,
 “wood, or other ground, to and for the use of the owner
 “thereof respectively, all such guns, fire-arms, slips,
 “nooses, toyles, snares, or other engines, and all dogs
 “there brought for coursing deer, in the same and like
 “manner as the game-keepers of manors are impowered
 “by law, within their respective manors, to seize and take
 “dogs, nets, or other engines, in the custody of persons
 “not qualified by the laws to keep the same; and if any
 “such person or persons shall there unlawfully beat or
 “wound any ranger or keeper, or his or their servants
 “or assistants, in the execution of his or their office or
 “offices, or shall attempt to rescue any person in the
 “lawful custody of any such ranger, keeper, servant, or
 “assistant, every person so offending shall be deemed and
 “adjudged to be guilty of felony, and on being lawfully
 “convicted on indictment, shall be transported to one of
 “his majesty’s plantations in *America* for the space of seven
 “years.”

How justices
 to proceed on
 information
 of offences.

† Sect. 11. By 16. Geo. 3. c. 30. s. 10. it is further
 enacted, “That, upon complaint or information upon
 “oath, of any one or more credible witness or witnesses,
 “before any one justice of the peace having jurisdiction
 “of any offence committed against this act, it shall and
 “may be lawful to and for such justice (except in such
 “cases only where the justice is specially directed pre-
 “viously to summon the party before him) to cause the
 “person or persons, who shall be charged by such com-
 “plaint or information, to be apprehended by warrant un-
 “der the hand and seal of such justice, and to be brought
 “before him at such time and place as shall be specified
 “in and by such warrant, and thereupon such justice shall
 “and may proceed to hear the matter of such complaint
 “or information, and to adjudge and determine the same;
 “and in such case where it is provided by this act that
 “the party complained of shall be summoned to appear,
 “if the party so summoned shall not appear according to
 “such summons, then, upon due proof made of the
 “service of such summons, either personally, or by leav-
 “ing the same at his dwelling-house, lodgings, or other
 “usual

“ usual place of abode, it shall be lawful for the justice, before whom the party was so summoned to appear, to apprehend such party by warrant, and to proceed as if no previous summons had been directed by this act.”

† *Stat. 12.* By 16. Geo. 3. c. 30. s. 11. it is further *Penalties.* enacted, “ That all the pecuniary penalties of this act shall be recoverable before one or more justice or justices of the peace for the county or other division in which the offence shall be committed, on proof of the offence, by the oath of one or more credible witness or witnesses, or on confession of the offender; and one moiety of each penalty shall belong to the king’s majesty, his heirs and successors, and be paid, for his and their use, into the hands of such person or persons as the said justice or justices shall direct, and the other moiety thereof shall belong and be paid to the informer or informers prosecuting for the same; and in case of non-payment thereof, with the charges incident to the conviction, immediately upon the conviction, the said penalty or penalties, and the charges incident, shall be levied by distress and sale of the goods and chattels of every such offender, by warrant under the hand and seal or hands and seals of the justice or justices before whom such conviction shall be made; and for want of sufficient distress, the offender or offenders, except in such cases only where it is otherwise provided by this act, shall be sent by the said justice or justices to the common gaol of the county or place where the offence shall be committed for the space of one whole year, without bail or mainprize, unless the said penalty, and charges incident, shall be sooner paid.”

† *Stat. 13.* By 16. Geo. 3. c. 30. s. 12. And to the end, “ That persons convicted of any of the offences for which pecuniary penalties are inflicted by this act, may not, by flight or removal after conviction, evade imprisonment where such penalties shall not be paid on conviction, and sufficient distress cannot be found for raising such penalties;” it is further enacted, “ That it shall and may be lawful for the justice or justices of the peace, before whom any offender shall be convicted of having incurred any pecuniary penalty of this act, immediately after such conviction, to order him or her into custody, in case he or she shall not immediately pay the penalty due on such conviction, during such time, not exceeding three days, as such justice or justices shall think proper.”

“ per to allow for return of the warrant for raising the penalty by distress and sale as aforesaid.”

Proviso.

† *Seft.* 14. By 16. Geo. 3. c. 30. s. 13. It is provided, “ That if it shall appear to the satisfaction of such justice or justices, either by the confession of the party convicted or otherwise, that such party hath not goods or chattels, sufficient whereon to levy the penalty or penalties so due, then, and in such case, the said justice or justices shall and may, without issuing any warrant of distress, proceed to commit the party so convicted, as if a warrant of distress had been issued, and a *nulla bona* returned thereon.”

Regulations where security is given.

† *Seft.* 15. By 16. Geo. 3. c. 30. s. 14. It is also provided, “ That if any person, committed for any first offence against this act, shall, before his commitment to prison, procure security to be given by two sufficient sureties, to the satisfaction of the justice or justices before whom he shall be so convicted, for payment of the penalty or penalties incurred, with the charges incident, within six days, inclusive of the day of conviction, then, and in such case, it shall be lawful for such justice or justices to accept such security, and upon non-payment thereof at the time to be stipulated for that purpose, to cause the party convicted, and his said sureties, to be apprehended by warrant under his or their hand and seal, or hands and seals, and them to commit to the common gaol of the county or place where the offence was committed, for such space of time as the party convicted was subject and liable to have been imprisoned in case no such security had been given, unless the penalty or charges shall be sooner paid.”

Keeper may apprehend persons, &c.

† *Seft.* 16. By 16. Geo. 3. c. 30. s. 15. it is further enacted, “ That it shall and may be lawful for any keeper or under-keeper of any forest, chase, purlieu, ancient walk, paddock, park, or other ground inclosed, where deer are, have been, or shall be usually kept, and their servants or assistants, to seize and apprehend, upon the spot, any person or persons whom they shall discover in the actual fact of hunting, coursing, killing, wounding, shooting at, taking, destroying, or carrying away, any red or fallow deer from any such forest, chase, purlieu, or ancient walk, whether inclosed or not, or in any inclosed park, paddock, wood, or in any other inclosed ground, or attempting so to do, or in setting or laying any-net, wire, slip, noose, toyle, snare, or other engine therein, for the taking, killing, or destroying of deer therein,

“ therein, and to carry such offender or offenders before
 “ some neighbouring justice of the peace having jurisdiction,
 “ to be dealt with according to law.”

† *Seet.* 17. By 16. Geo. 3. c. 30. s. 16. it is further Offenders committed.
 enacted, “ That in case any offender for his first offence
 “ against this act shall, for want of a sufficient distress, be may be enlarged.
 “ committed to gaol, and shall, whilst in gaol, obtain the
 “ consent in writing of the prosecutor, and also of the
 “ owner, ranger, forester, keeper, or other person chiefly
 “ intrusted with the care of the deer in the forest, chase,
 “ purlieu, ancient walk, park, paddock, or place, wherein
 “ the offence was committed, for his enlargement; that
 “ then, and in every such case, it shall and may be lawful
 “ to and for the justices of the peace having jurisdiction, at
 “ their general or quarter sessions, to cause such offender
 “ to be brought before them, and thereupon by their order
 “ to direct the keeper of such gaol to set such offender at
 “ liberty; and the said keeper is hereby directed to obey
 “ such order accordingly; any thing herein-before contained
 “ to the contrary notwithstanding.”

† *Seet.* 18. And by 16. Geo. 3. c. 30. s. 17. for the better Discovery,
 discovery of offenders against this act, it is further enacted, &c.
 “ That any person who shall offend against this act, and
 “ shall make discovery of any other person or persons
 “ who hath or have offended against the same, to as he,
 “ she, or they, be duly convicted of such offence according
 “ to this act; then, and in such case, such discoverer shall
 “ be discharged of all the forfeitures and penalties of this
 “ act, by him, her, or them incurred previous to such dis-
 “ covery.”

† *Seet.* 19. By 16. Geo. 3. c. 30. s. 18. “ And, in order How justices to proceed for conviction of offenders.
 to prevent the quashing of convictions of offenders against
 this act for want of form,” it is further enacted, “ That
 “ the conviction and convictions of all and every offenders
 “ against this act shall be certified by the justice or justices
 “ of the peace before whom the same shall be made, to the
 “ next general quarter-sessions of the peace, to be filed
 “ amongst the records of the said sessions; which said
 “ conviction shall be good and effectual in law to all in-
 “ tents and purposes, and shall not be quashed, set aside, or
 “ adjudged void or insufficient, for want of any form or
 “ words whatsoever.”

† *Seet.* 20. By 16. Geo. 3. c. 30. s. 19. it is further Certiorari allowed, &c.
 enacted, “ That no *certiorari* shall be allowed to remove
 “ any conviction made, or other proceedings, of, for, or
 “

“ concerning any matter or thing in this act, unless the
 “ party or parties convicted shall, before the allowance
 “ of such *certiorari*, become bound to the person or persons
 “ prosecuting in the sum of one hundred pounds, with suf-
 “ ficient sureties as the justice or justices of the peace before
 “ whom the offender was convicted, with condition to pay
 “ unto the said prosecutors, within thirty days after such
 “ conviction confirmed, on a *procedendo* granted, their full
 “ costs and damages, to be ascertained upon their oaths ;
 “ and shall become also bound to the justice or justices of
 “ the peace before whom such conviction was made, with such
 “ sufficient sureties as such justice or justices shall approve
 “ of, in the penalty of sixty pounds for each offence, with
 “ condition to prosecute such writ of *certiorari* with effect,
 “ and to pay such justice or justices the forfeitures due
 “ by such conviction, to be distributed as by this act is
 “ directed, or to render the person or persons convicted to
 “ such justice or justices, within thirty days next after such
 “ conviction shall be confirmed, or a *procedendo* granted ;
 “ and that in default thereof, it shall be lawful to proceed
 “ to the levying of the penalty mentioned in such convic-
 “ tion, in such manner as if no such *certiorari* had been
 “ awarded.”

Confirmation
of convictions.

† *Stat. 21.* By 16. Geo. 3. c. 30. s. 20. it is further
 enacted, “ That after the confirmation of any conviction
 “ or convictions upon this act, by any of the superior courts
 “ at *Westminster*, and delivering the rule to the said justice
 “ or justices, whereby such conviction or convictions hath
 “ or have been so confirmed, it shall and may be lawful for
 “ such justice or justices to proceed against the party or
 “ parties convicted, in the same manner as if a *procedendo*
 “ had been granted.”

Appeal.

† *Stat. 22.* By 16. Geo. 3. c. 30. s. 21. It is provided, “ That
 “ if any person or persons shall think him, her, or themselves
 “ aggrieved by the judgment or determination of any justice or
 “ justices of the peace, upon conviction of or for any of the
 “ offences in this act, and shall not have sought his remedy
 “ by removing the matter by *certiorari* as aforesaid, such
 “ person or persons may appeal from the judgment of the
 “ said justice or justices to the general or quarter sessions
 “ of the peace, to be held for the said county, division, or
 “ place, where such person or persons was or were con-
 “ victed, next after the expiration of twenty days from the
 “ time of such conviction ; but the person or persons so
 “ appealing shall, and he, she, and they, are hereby re-
 “ quired and directed to give at least six days notice in
 “ writing

“ writing to the prosecutor or prosecutors of such person
 “ or persons as shall so appeal, of such his, her, or their
 “ intention of bringing and prosecuting such appeal, and
 “ of the matter thereof, and shall enter into recognizance
 “ before some justice or justices of the peace for the
 “ county, division, or place, wherein the conviction or
 “ judgment was made or given, with two sufficient sure-
 “ ties, to be approved by the said justice or justices, on
 “ conviction, to appear and try such appeal at the general
 “ or quarter sessions which shall be held in and for the
 “ county, division, or place, wherein such conviction or
 “ judgment was made or given, next and immediately af-
 “ ter the expiration of ten days from the time of such con-
 “ viction, and to abide by the order or determination of
 “ such Court, and for payment of such costs and charges
 “ as shall be awarded at the said Court, and every such ap-
 “ peal and appeals shall, by the Court at the said general
 “ or quarter sessions, to which such appeal or appeals is or
 “ are made, be then examined, and the facts and circum-
 “ stances of the case fully inquired into, and the matter
 “ then finally heard and determined; and in case such
 “ judgment, determination, or conviction, as aforesaid,
 “ shall be then and there affirmed, the party appealing
 “ shall pay unto the prosecutor or prosecutors, his, her, or
 “ their full costs, to be ascertained by order of the said Court
 “ of general or quarter sessions.”

† *Sec. 23.* By 16. Geo. 3. c. 30. s. 22. It is also provided,
 “ That in case any person or persons, thinking him, her,
 “ or themselves aggrieved as aforesaid, shall have paid the
 “ penalty inflicted by this act for the offence of which he,
 “ she, or they shall have been convicted, or shall be then
 “ imprisoned; every such person or persons having so
 “ paid, or being so imprisoned, may appeal to such judg-
 “ ment, order, determination, or conviction as aforesaid,
 “ on entering into recognizance, by himself, herself, or
 “ themselves only, and without any surety or sureties, con-
 “ ditioned as before mentioned, the said penalty remaining
 “ in the hands of such justice or justices, or such person
 “ or persons continuing in prison in the mean time, and
 “ until the merits of the said appeal shall be heard and
 “ finally determined.”

† *Sec. 24.* By 16. Geo. 3. c. 30. s. 23. It is also provided,
 “ That no such conviction made, or judgment given as
 “ aforesaid, shall be set aside by the said Court or general
 “ or quarter sessions, for want of form, or for want of
 “ stating, or through the mis-stating of any facts, circum-
 “ stances, or matter whatsoever, in case the facts alledged

Proceedings
 not to be
 quashed, &c.

“ in the said conviction, or on which the same shall be
 “ grounded, shall be proved to the satisfaction of the said
 “ Court ; but such appeal and appeals shall be decided on
 “ the merits of the case only ; nor shall such conviction or
 “ judgment be removed or removeable by *certiorari*, or any
 “ other writ or process whatsoever, into any of his majesty’s
 “ courts of record at *Westminster* ; any law or statute to the
 “ contrary notwithstanding.”

General issue. † *Sect. 25.* By 16. Geo. 3. c. 30. s. 24. It is provided and enacted, “ That if any person or persons shall be
 “ sued or prosecuted for any matter or thing which he or
 “ they shall do in pursuance of this act, it shall and may
 “ be lawful to and for the person or persons so sued or pro-
 “ secuted to plead the general issue, and give the special
 “ matter in evidence ; and if a verdict shall pass for the de-
 “ fendant, or the plaintiff shall become nonsuit, or suffer a
Treble costs. “ discontinuance, or if upon a demurrer judgment shall be
 “ given against the plaintiff, the defendant shall have and
 “ recover his treble costs, and have the like remedy for the
 “ same as any defendant hath in any other case by law.”

Prosecutions within twelve months, &c. † *Sect. 26.* By 16. Geo. 3. c. 30. s. 25. it is further enacted, “ That every prosecution for any offence against
 “ this act shall be commenced within twelve calendar
 “ months, but not after, from the time of the offence com-
 “ mitted ; and that such persons as shall be prosecuted under
 “ this act for any of the offences aforesaid, shall not be
 “ liable to prosecution for the same offences under any
 “ other act of parliament, or in any court of attachment,
 “ swainmote, cyre, or any forest court.”

Limitation of actions. † *Sect. 27.* By 16. Geo. 3. c. 30. s. 26. it is further enacted, “ That all actions, writs, and prosecutions, to be
 “ commenced against any person or persons for any thing
 “ to be done under or in pursuance of this act, shall be
 “ laid and tried in the county or place where the fact was
 “ committed, and shall be commenced within six calendar
 “ months after the fact committed, and not otherwise.”

† *Sect. 28.* By 16. Geo. 3. c. 30. s. 28. It is provided, and further enacted, “ That nothing contained in this
 “ act shall extend to that part of *Great Britain* called
 “ *Scotland*.”

Rex v. Davis, Cases Crown Law 391. † *Sect. 29.* It has been determined that the statute
 16. Geo. 3. c. 30. amounts to a virtual repeal of the 9. Geo. 1.
 c. 22. as to the simple offence of killing deer in a park in-
 closed.

CHAPTER THE FORTY-SIXTH

CONTINUED.

OF

STEALING FISH.

† *Sec. 1.* BY 5. Eliz. c. 21. f. 2. “Whoever shall
 “break, cut down, cut out, or destroy
 “any head or dam of any ponds, pools, moats, stagnes,
 “stews, or several pits wherein fish are or shall happen to
 “be put in or stored withal by the owners or possessors
 “thereof; or do or shall wrongfully fish in any of the
 “said several ponds, pools, moats, stews or pits, to the
 “intent to destroy, kill, take, or steal away any of the
 “same fish, against the will of the owners, shall suffer
 “three months imprisonment, find security for his good
 “behaviour for seven years, and make compensation to the
 “party grieved.”

For the offence of trespassing in ponds by endeavouring to take fish therein, vide 3. Ed. 1. c. 20. 2. Inst. 202. Vide also 31. Hen. 8. c. 2. where this offence was made felony.

† *Sec. 2.* By 4. and 5. Will. 3. c. 23. f. 5. “No
 “person, except the owner or occupier of a fishery,
 “shall have or keep any net, angle, leap, piche, or other
 “engine for the taking of fish, other than the makers
 “and sellers thereof for their better conveniency in the
 “sale of the same, and other than the owner and occupier
 “of any river or fishery for the time being;—and the
 “owner of any river or fishery, or his appointee, may
 “seize, detain, and keep to his own use, all such nets, or
 “other engines which he shall find used or laid, or in the
 “custody of any person whatsoever, fishing in any river
 “or fishery whatsoever, without the consent of the owner
 “or occupier:—and any person being authorised by war-
 “rant under the hand and seal of a justice for the county
 “or place, may search in the day-time the houses of per-
 “sons prohibited to keep the same, who shall be suspected
 “of having the same, and the same and every or any of
 “them to seize, detain and keep to his or their own use,
 “or otherwise to cut in pieces or destroy. as things by this
 “act prohibited to be kept by persons of their degree.—

“But

“ But this shall not extend to fishermen, &c. authorized to
 “ fish in navigable rivers or waters with lawful nets, &c.”

† *Stat. 3.* By 22. and 23. Car. 2. c. 25. s. 7. it is
 also enacted, “ That whoever shall use any casting net, or
 “ other net whatsoever, or any angle, hair hoose, trail or
 “ spear, or shall lay any wears, pots, nets, fish-hooks, or
 “ other engines, or shall take any fish by any means or de-
 “ vice whatsoever, in any river, stew, pond, mote, or other
 “ several waters or rivers, or shall be aiding or assisting
 “ thereunto, without the consent of the owner, on conviction
 “ by confession, or the oath of one credible witness within
 “ a month, before one justice, shall render compensation,
 “ not exceeding treble damages, and over and above, pay
 “ down immediately any sum not exceeding ten shillings,
 “ to the use of the poor, and on default by distress, shall be
 “ imprisoned, not exceeding one month, in the house of
 “ correction, unless the offender shall enter into a bond to
 “ the party injured, with one surety not exceeding ten
 “ pounds, never to offend in like manner.—Justices may
 “ seize the nets, &c. but the party may appeal to the quar-
 “ ter-sessions, which shall be final, unless title to any land,
 “ royalty, or fishery, is concerned therein.”

† *Stat. 4.* By 9. Geo. 1. c. 22. “ Whoever being
 “ armed with swords, fire-arms, or other offensive wea-
 “ pons, and having his or their faces blacked, or being
 “ otherwise disguised, shall unlawfully steal or take any
 “ fish out of any river or pond, or shall forcibly rescue any
 “ person in lawful custody for the same, or shall by gift or
 “ promise of money or other reward, procure any of the
 “ king’s subjects to join him or them in any such unlawful
 “ act, shall suffer death without clergy.”

† *Stat. 5.* By 5. Geo. 3. c. 14. IT IS RECITED, “ That
 the several laws in being for the preservation of the fish in
 rivers, ponds, pools, moats, stews, and other waters, are
 by experience found to be ineffectual to deter divers loose,
 idle, and disorderly persons from stealing, taking away, or
 destroying, the fish therein bred and preserved;” and
 therefore ENACTED, “ That in case any person or persons
 “ shall enter into any park or paddock fenced in and in-
 “ closed, or into any garden, orchard, or yard, adjoining
 “ or belonging to any dwelling-house, in or through
 “ which park or paddock, garden, orchard or yard, any
 “ river or stream of water shall run or be, or wherein
 “ shall be any river, stream, pond, pool, moat, stew, or
 “ other water, and by any ways, means, or device, what-
 “ soever,

Persons con-
 victed of steal-
 ing or de-
 stroying fish,
 &c. are to be
 transported
 for seven
 years.

“foever, shall steal, take, kill, or destroy, any fish bred,
 “kept, or preserved, in any such river or stream, pond,
 “pool, moat, stew, or other water aforesaid, without
 “the consent of the owner or owners thereof; or shall
 “be aiding or assisting in the stealing, taking, killing, or
 “destroying, any such fish as aforesaid; or shall receive
 “or buy any such fish, knowing the same to be so stolen
 “or taken as aforesaid; and being thereof indicted with-
 “in six calendar months next after such offence or of-
 “fences shall have been committed, before any judge
 “or justices of gaol-delivery for the county wherein
 “such park or paddock, garden, orchard, or yard, shall
 “be, and shall on such indictment be, by verdict, or his
 “or their own confession or confessions, convicted of
 “any such offence or offences as aforesaid; the person
 “or persons so convicted shall be transported for seven
 “years.”

+ Sect. 6. By 5. Geo. 3. c. 14. s. 2. it is recited, “That
 for the more easy and speedy apprehending and con- Any offender
 victing of such person or persons as shall be guilty of convicting his
 any of the offences before-mentioned,” and further en- accomplices
 acted, “That in case any person or persons shall at intitled to
 “any time commit or be guilty of any such offence or pardon.
 “offences as are herein-before mentioned, and shall sur-
 “render himself to any one of his majesty’s justices of
 “the peace in and for the county where such offence
 “or offences shall have been committed; or being ap-
 “prehended and taken, or in custody for such offence
 “or offences, or on any other account, and shall volun-
 “tarily make a full confession thereof, and a true dis-
 “covery, upon oath, of the person or persons who was
 “or were his accomplice or accomplices in any of the
 “said offences, so as such accomplice or accomplices
 “may be apprehended and taken, and shall, on the trial
 “of such accomplice or accomplices, give such evidence
 “of such offence or offences, as shall be sufficient to
 “convict such accomplice or accomplices thereof; such
 “person making such confession and discovery, and giv-
 “ing such evidence as aforesaid, shall, by virtue of this
 “act, be pardoned, acquitted, and discharged of and from
 “the offence or offences so by him confessed as afore-
 “said.”

+ Sect. 7. By 5. Geo. 3. c. 14. s. 3. it is further en- Persons con-
 acted, “That in case any person or persons shall take, victed of tak-
 “kill, or destroy, or attempt to take, kill, or destroy, ing or de-
 “any fish, in any river or stream, pond, pool, or other stroying, &c.
 Vol. I. C c “water

Forfeit to the
owner of the
fishery 5l.

“ water (not being in any park or paddock, or in any
“ garden, orchard, or yard, adjoining or belonging to
“ any dwelling-house, but shall be in any other inclosed
“ ground which shall be private property), every such per-
“ son, being lawfully convicted thereof by the oath of
“ one or more credible witnesses or witnesses, shall forfeit
“ and pay, for every such offence, the sum of five
“ pounds, to the owner or owners of the fishery of such
“ river or stream of water, or of such pond, pool, moat,
“ or other water: And it shall and may be lawful to and
“ for any one or more of his majesty’s justices of the peace
“ of the county, division, riding, or place, where such last-
“ mentioned offence or offences shall be committed, up-
“ on complaint made to him or them upon oath, against
“ any person or persons, for any such last-mentioned of-
“ fence or offences, to issue his or their warrant or war-
“ rants to bring the person or persons so complained of
“ before him or them; and if the person or persons
“ so complained of shall be convicted of any of the said
“ offences last-mentioned, before such justice or justices,
“ or any other of his majesty’s justices of the same coun-
“ ty, division, riding, or place aforesaid, by the oath or
“ oaths of one or more credible witness or witnesses,
“ which oath such justice or justices are hereby autho-
“ rized to administer, or by his or their own confession;
“ then, and in such case, the party so convicted shall,
“ immediately after such conviction, pay the said penalty
“ of five pounds, hereby before imposed for the offence
“ or offences aforesaid, to such justice or justices before
“ whom he shall be so convicted, for the use of such per-
“ son or persons as the same is hereby appointed to be
“ forfeited and paid unto; and, in default thereof, shall
“ be committed by such justice or justices to the house of
“ correction, for any time not exceeding six months, unless
“ the money forfeited shall be sooner paid.”

† *Stat. 8. Bv 5. Geo. 3. c. 14. s. 4.* it is provided,
“ That it shall and may be lawful to and for
“ such owner or owners of the fishery of such river or
“ stream of water, or of such pond, pool, or other water,
“ wherein any such offence or offences last-mentioned shall
“ be committed as aforesaid, to sue and prosecute for, and
“ recover the said sum of five pounds, by action of debt,
“ bill, plaint, or information, in any of his majesty’s
“ courts of record at *Westminster*; and in such action or
“ suit, no essoin, wager of law, or more than one impar-
“ lance, shall be allowed; provided that such action or
“ suit be brought, or commenced, within six calendar
“ months

“ months next after such offence or offences shall have
“ been committed.”

† *Sect. 9.* By 5. Geo. 3. c. 14. f. 5. it is also provided, “ That nothing in this act shall extend, or
“ be construed to extend, to subject or make liable any
“ person or persons to the penalties of this act, who shall
“ fish, take, or kill, and carry away, any fish, in any river
“ or stream of water, pond, pool, or other water, wherein
“ such person or persons shall have a just right or claim to
“ take, kill, or carry away, any such fish.”

† *Sect. 10.* It hath been determined that a person who *Kinnerley v.*
fishes in a fishery belonging to another, but to which he has *Orpe,*
a claim, for the purpose of giving occasion to an action in *Dougl. 517.*
order to try the right, is not liable to a penalty under the
statute above recited.

CHAPTER THE FORTY-SEVENTH.

O F

ALTERING RECORDS.

OFFENCES against *public justice* made felonies by statute, are

1. Altering records.
2. Personating bail.
3. Durefs in gaolers.
4. Returning from transportation.
5. Taking a reward to restore stolen goods.
6. Advertizing a reward for the restoration of stolen goods.
7. Buying stolen goods.
8. Rescuing the body of an executed murderer.
9. Incurrible rogues.
10. Persons convicted of perjury escaping.

AND FIRST, Of altering records.

† *Sect. 1.* The offence of embezzling, defacing, or altering any record, without due authority, is an offence at common law, highly punishable by fine and imprisonment, &c. 3. Inst. 71, 72.
1. Hale 646.

† *Sect. 2.* By 8. Hen. 6. c. 12. it is ordained, “ That if
“ any record or parcel of the same, writ, return, panel,
“ process, or warrant of attorney, in the king’s courts of
“ chancery, exchequer, the one bench or the other, or in
“ his treasury, be willingly stolen, taken away, withdrawn,
“ or avoided, by any clerk, or by other person, because
C c 3 “ whereof

“ whereof any judgment shall be reversed ; that such stealer,
 “ taker-away, withdrawer, or avoider, their procurators,
 “ counsellors, and abettors, thereof indicted, and by process
 “ thereupon made thereof duly convicted by their own con-
 “ fession, or by inquest to be taken of lawful men, (whereof
 “ the one half shall be of the men of any court of the same
 “ courts, and the other half of the other) shall be judged
 “ for felons, and shall incur the pain of felony : and that
 “ the judges of the said courts, of the one bench or of the
 “ other, have power to hear and determine such defaults
 “ before them, and thereof to make due punishment, as
 “ afore is said.”

Sect. 3. In the construction of this clause, it hath been holden :

3. Inst. 71.
 1. Hale 646
 to 648.

Sect. 4. FIRST, That it extends only to the courts which are expressly named ; and to the court of chancery so far only as it proceeds according to the course of the common law.

3. Inst. 72.

Sect. 5. SECONDLY, That it extends not to such offence by the judges of any court ; for whereas it begins with expressly naming clerks, which are inferior to them, it shall not be intended to include them under the general words following.

2. R. 3. 10.
 3. Mod. 66.
 B. Cor. 174.
 B. Tresp. 31.

Sect. 6. However, by 8. Ric. 2. c. 4. “ Judges as well as clerks are to pay a fine to the king, and make satisfaction to the party for falsely entering pleas, or rasing rolls, or changing verdicts, to the disherison of any one.”

Con. B. pre-
 sent. 23. indict.
 14. 50.
 3. Inst. 72.

Sect. 7. And judges are highly punishable at common law for other offences of like nature, as for inserting a bill of indictment not found by the jury among those which were found, and such like ; and *Justice INGRAM*, in the reign of *Edward the First*, was fined eight hundred marks, for rasing a fine of thirteen shillings and four-pence, set on a poor man, and making it six shillings and eight-pence.

2. Roll. 81.

Sect. 8. THIRDLY, That not only such an alteration whereby a judgment is actually reversed, but also such whereby it is reversible, whether it were made before or after the judgment was given, or whether it be or be not afterwards amended by the Court, is within this act ; for those words in the statute, “ whereby any judgment shall be reversed,” are taken to have the same purport as if it were said, “ whereby any judgment shall be annulled, or lose its force or effect ;” for it is plain, that the statute cannot in-
 tend

tend that the judgment must be actually reversed by writ of error, because it speaks of stealing or carrying away, or avoiding of records, which makes it impossible that the judgment should be reversed at all, because no writ of error can remove a judgment which appears not. And it has been holden, that if *A. B.* be outlawed by the name of *A. C.* and afterwards the record be rased, and *A. B.* inserted, the offence is within the statute, because the record against *A. C.* is annulled, and the judgment prevented, which might have been given on a writ of error for this defect.

2. R. 3. 10.
S. P. C. 36.
3. Inst. 72.
11. Rep. 34.

Sec. 9. FOURTHLY, If the offence were committed partly in one county and partly in another, but not so as to amount to a compleat offence within the statute in either, that the party cannot be indicted for a felony, because the counties cannot join in an indictment, and that which is done in one cannot be found in another, but that he may be indicted for a misprision in either county.

2. R. 3. 10, 11.
S. P. C. 36.
3. Inst. 73.

Sec. 10. FIFTHLY, That the act, by making those who are accessary before the fact principal felons, does not mean any way to favour those who are accessary after, but to leave them to the general construction of the law.

3. Inst. 72.
Con. S. P. C. 44

Sec. 11. SIXTHLY, That by the last clause of the act, the justices of either bench have a concurrent authority, and that they which shall first enquire shall proceed; and that if the offence were committed in the county where the benches sit, they need no other commission; but if it were done in another county, that they must have a special commission: and if in *London*, that they shall have a commission in which THE MAYOR shall be omitted; for the charters of the city, which require that he shall be a principal in every commission, extend not to such causes which are specially limited to particular judges.

3. Inst. 72.
2. R. 3. 12.

CHAPTER THE FORTY-SEVENTH

CONTINUED.

O F

PERSONATING BAIL.

Felony to levy a fine, suffer a recovery, &c. in another's name not privy thereto.

1. Ventr. 301. Jones Sir T.

64.
3. Keb. 604.

BY 21. Jac. 1. c. 26. s. 1. IT IS RECITED, "That many persons of base condition, for very little reward or recompence, have of late years used and still do use to levy fines and suffer recoveries of lands and other hereditaments, to acknowledge statutes, recognizances, bails, and judgments, in the name or names of any other person or persons not privy or consenting to the same, which hath and daily doth turn to the great inquietation, charge, trouble, and undoing of many of the good subjects of this kingdom, and the rather, for that there is no remedy in law to reform these and the like abuses;" AND ENACTED, "That all and every person and persons who shall acknowledge, or procure to be acknowledged, any fine or fines, recovery or recoveries, deed or deeds inrolled, statute or statutes, recognizance or recognizances, bail or bails, judgment or judgments, in the name or names of any other person or persons not privy or consenting to the same, and being thereof lawfully convicted or attainted, shall be adjudged, esteemed, and taken to be felons; and suffer the pains of death, and incur such forfeitures and penalties, as felons in other cases convicted or attainted do by the laws of *England* lose and forfeit, without the benefit or privilege of clergy to be allowed to any such offender or offenders."

This felony shall not corrupt the blood, nor take away dower.

† **Sec. 2.** By 21. Jac. 1. c. 26. s. 2. it is provided, "That such attainder shall not be any corruption of blood, nor loss of dower to the wife, but the next heir shall have the lands whereof such persons attainted died seised, and such wife her dower, as if no such attainder had been had."

An attorney may do it, where judgment is given.

† **Sec. 3.** By 21. Jac. 1. c. 26. s. 3. it is further provided, "That this act shall not extend to any judgment or judgments"

“ ments acknowledged by any attorney or attornies of record, for any person or persons against whom any such judgment or judgments shall be had or given.”

Sect. 4. In the construction hereof it has been holden, 2. Jon. 64. That if a man personate another in the county of *A.* in putting in bail before a judge, and the bail be filed in the county of *B.* the trial shall be in the county of *A.*

† *Sect. 5.* Also it seems, that the bare personating of bail before a judge is no felony, unless the bail be filed.

Contra in the report of the same case, 1. Ven. 301. 302.

† *Sect. 6.* It seems also, that if bail be put in in the names of persons who have no existence, the offender cannot be prosecuted upon this statute for felony in having personated bail, but the Court may order him to be set on the pillory for the misdemeanor.

Anonymous, 1. Stra. 384.

† *Sect. 7.* It seems also, that if the person personated can clearly make out the fact upon affidavit, the Court will relieve him from the liability of payment by vacating the record.

Beckman's Case, 12. Mod. 257.

† *Sect. 8.* By 4. Will. and Mary, c. 4. s. 1. it is enacted, Chief justice, “ That the chief justice, and other the justices of the court &c. may make
“ of king's bench for the time being, or any two of them, any persons,
“ whereof the chief justice for the time being to be one for except at-
“ the said court of king's bench, and the chief justice of the tornies and so-
“ court of common pleas, and other the justices there for licitors, com-
“ the time being, or any two of them, whereof the chief take bail in
“ justice of the same court to be one for the said court of the country,
“ common pleas, and also the chief baron and barons of the
“ quoir of the court of the exchequer for the time being, or
“ any two of them, whereof the chief baron for the time
“ being to be one for the said court of exchequer, shall or
“ may, by one or more commission or commissions under
“ the several seals of the said respective courts, from time to
“ time, as need shall require, empower such and so many
“ persons, other than common attornies and solicitors, as
“ they shall think fit and necessary, in all and every the
“ several shires and counties within the kingdom of *England*,
“ dominion of *Wales*, and town of *Berwick upon Tweed*,
“ to take and receive all and every such recognizance or
“ recognizances of bail or bails, as any person or persons Justice, &c.
“ shall be willing or desirous to acknowledge or make be- to receive the
“ fore any of the persons so empowered, in any action or bail-piece up-
“ suit depending, or hereafter to be depending, in the said on affidavit of
“ respective courts, or any of them, in such manner and due execution.
“ form

Bail taken below to be as *de bene esse*.

Power given to justices, &c. to make rules for justifying, but not to order the person's appearance.

London, &c. saved.

Justices of assize may take bail.

Felony for any person to be bail in another man's name, *as. Jac. 1. c. 26.*

“ form, and by such recognizance or bail-piece as the justices and barons of the said respective courts have used to take the same ; which said recognizance or recognizances of bail or bail-piece, so taken as aforesaid, shall be transmitted to some or one of the justices or barons of the said respective courts where such action or suit shall be depending, who, upon affidavit made of the due taking of the recognizance of such bail or bail-piece by some credible person present at the taking thereof, such justice or baron shall receive the same, upon payment of such fees as have been usually received for the taking of special bails by the justices’ and barons’ clerks, and other the officers of the said respective courts ; which recognizance of bail or bail-piece, so taken and transmitted, shall be of the like effect as if the same were taken *de bene esse* before any of the said justices and barons ; for the taking of every which recognizance or recognizances of bail or bail-piece, the person or persons so impowered shall receive only the sum or fee of two shillings, and no more.”

† *Stat. 9.* By 4. Will. and Mary, c. 4. s. 2. it is further enacted, “ That the justices and barons respectively in the several courts shall make such rules and orders for the justifying of such bails, and making of the same absolute, as to them shall seem meet, so as the cognizor or cognizors of such bail or bails be not compelled to appear in person in any of the said courts, to justify him or themselves, but the same may and is hereby directed to be determined by affidavit or affidavits duly taken before the said commissioners, who are hereby impowered and required to take the same, and also to examine the sureties upon oath touching the value of their respective estates, unless the cognizor or cognizors of such bail do live within the cities of *London* and *Westminster*, or within ten miles thereof.”

† *Stat. 10.* By 4. Will. and Mary, c. 4. s. 3. it is further enacted, “ That any judge of assize in his circuit shall and may take and receive all and every such recognizance and recognizances of bail or bails as any person shall be willing and desirous to make and acknowledge before him, which being transmitted in like manner as aforesaid, shall (without oath) be received in manner as aforesaid, upon payment of the usual fees.”

† *Stat. 11.* By 4. Will. and Mary, c. 4. s. 4. it is further enacted, “ That any person or persons who shall, before any person or persons impowered by virtue of this act as aforesaid, to take bail or bails, represent, or personate “ any

“ any other person or persons, whereby the person or persons so represented and personated may be liable to the payment of any sum or sums of money for debt or damages to be recovered in the same suit or action, wherein such person or persons are represented and personated, as if they had really acknowledged and entered into the same, being lawfully convicted thereof, shall be adjudged, esteemed, and taken to be FELONS, and suffer the pains of death, and incur such forfeitures and penalties as felons in other cases convicted or attainted do by the law of *England* lose and forfeit.”

CHAPTER THE FORTY-SEVENTH

CONTINUED.

OF

DURESS BY GAOLERS.

1. Hale 640,
641. 601.
S. P. C. 36. C.
3. Inst. 91.
2. Inst. 589.
381.

TO prevent abuses by the extensive power which the law is obliged to repose in gaolers, it is enacted by 14. Edw. 3. c. 10. "That if any keeper of a prison, or under-keeper, by too great duress of imprisonment, and by pain, make any prisoner that he hath in his ward to become an appellor against his will, he is guilty of felony."

Sect. 2. And it is said to be no way material, whether the approvement be true or false, or whether the appellee be acquitted or condemned; but at common law this offence was esteemed a misprison only, unless the appellee were hanged by reason of the appeal.

4. Ed. 3. c. 10.
1. Inst. 43. 53.
381.
Co. Lit. 233.
4. Co. 44.
9. Co. 50.
Ray. 216.
Lev. 71.
2. Hawk. 151.
3. Mod. 143.

† *Sect. 3.* It has been determined, that gaolers, as well *de facto* as *de jure*, are liable to attachment for contempt of Court, and to fine, imprisonment, and forfeiture of office for gross and palpable abuses; as in treating criminals with barbarity, extorting money, not making lawful deliverance, or suffering them to escape; and that if death be the consequence of their harsh treatment, it is felonious homicide.

3. Inst. 91. Fost. 321.

When only to
be removed.

† *Sect. 4.* By 31. Car. 2. c. 2. s. 9. "If any person shall be committed to any prison, for any criminal or supposed criminal offence, he shall not be removed from thence, unless it be by *habeas corpus*, or some other legal writ: or where he is removed from one prison or place to another, within the same county, in order to his trial or discharge; or in case of sudden fire or infection, or other necessity, on pain that the person signing any warrant for such removal, and the person executing the same, shall forfeit for the first offence one hundred pounds, and for the second two hundred pounds, to the party grieved."

Sect.

† *Sect. 5.* But by 19. Car. 1. c. 4. f. 2. "On emergent occasions, as in case of infectious diseases, the sheriff or gaoler, with the advice and consent of three or more justices may, if they shall find it needful, provide other safe places (with the owners consent) for the removal of sick or other persons out of the usual gaols."

† *Sect. 6.* By 22. and 23. Car. 2. c. 20. f. 13. "The gaoler shall not put, keep, or lodge prisoners for debt and felons together in one room or chamber; but they shall be put, kept, and lodged separate and apart from one another in distinct rooms; on pain of forfeiting his office, and treble damages to the party grieved." Debtors and felons to be kept separate.

† *Sect. 7.* And by 31. Geo. 3. c. 46. f. 9. "As long as any person under sentence of transportation shall continue in the common gaol, the gaoler shall separate such convict, as far as conveniently may be, from every person in his custody, except prisoners convicted of felony." Transports to be kept separate from other prisoners.

† *Sect. 8.* Nevertheless it seemeth generally in all cases where a man is committed to prison, especially if it be for felony, or upon an execution, or but for a trespass or other offence, every gaoler ought to keep such prisoner in safe and close custody; safe, that he cannot escape; and close, without conference with others or intelligence of things abroad. Dalt. c. 170.

† *Sect. 9.* And therefore if the gaoler shall license his prisoner to go abroad for a time, and then to come again, or to go abroad with a keeper, though he come again, yet these are escapes. Dalt. c. 170.

† *Sect. 10.* And hereupon it is lawful for the gaoler to hamper a felon with irons to prevent his escape. And it is said, that a gaoler is no way punishable for keeping even a debtor in irons. 1. H. H. 601. Dalt. c. 170.

† *Sect. 11.* But the learned editor of *Hale's History* observes, that this liberty even in the case of a felon (much more in the case of a prisoner for debt) can only be intended, where the officer has just reason to fear an escape; as where the prisoner is unruly, or makes any attempt to that purpose; but otherwise, notwithstanding the common practice of gaolers, it seems altogether unwarrantable, and contrary to the mildness and humanity of the laws of England, by which gaolers are forbidden to put their prisoners to any pain or torment. And *Lord Coke* is express, that by the common law it might not be done.

2. Inst. 381.
1. H. H. 601.

Sect.

Officer may
not carry his
prisoner to
any tavern or
other publick
house, with-
out his con-
sent, &c.

† *Stat. 12.* By 32. Geo. 2. c. 28. §. 1. IT IS RECITED,
“ That many persons suffer by the oppression of inferior
officers in the execution of process for debt, and the exaction
of gaolers to whom such debtors are committed; for remedy
whereof, it may be reasonable not only to enforce the exe-
cution of the laws now in being against such oppressions
and exactions, more especially several clauses in a statute
made at a parliament held in the twenty-second and twenty-
third years of the reign of *King Charles the Second* (intituled,
*An act for the relief and release of the poor distressed prisoners for
debt*) but likewise to make some further provisions for the
ease and relief of debtors who shall be willing to satisfy their
creditors to the utmost of their power;” IT IS ENACTED,
“ That no sheriff, under-sheriff, bailiff, serjeant at mace, or
“ other officer or minister whatsoever, shall at any time or
“ times hereafter convey or carry, or cause to be conveyed
“ or carried, any person or persons by him or them arrested,
“ or being in his or their custody by virtue or colour of any
“ action, writ, process, or attachment, to any tavern, ale-
“ house, or other publick victualling or drinking house, or
“ to the private house of any such officer or minister, or of
“ any tenant or relation of his, without the free and volun-
“ tary consent of the person or persons so arrested or in
“ custody; nor charge any such person or persons with any
“ sum of money for any wine, beer, ale, victuals, tobacco,
“ or any other liquor or things whatsoever, save what he,
“ she, or they shall call for, of his; her, or their own free
“ accord; nor shall cause or procure him, her, or them, to
“ call or pay for any such liquor or things, except what he,
“ she, or they shall particularly and freely ask for; nor shall
“ demand, take, or receive, or cause to be demanded, taken,
“ or received, directly or indirectly, any other or greater
“ sum or sums of money than is or shall be by law allowed
“ to be taken or demanded for any arrest or taking, or for
“ detaining, or waiting till the person or persons so arrested
“ or in custody shall have given an appearance or bail, as
“ the case shall require, or agreed with the person or per-
“ sons at whose suit or prosecution he, she, or they shall
“ be taken or arrested, or until he, she, or they shall be
“ sent to the proper gaol belonging to the county, riding,
“ division, city, town, or place where such arrest or taking
“ shall be; nor shall exact or take any reward, gratuity, or
“ money for keeping the person or persons so arrested or in
“ custody out of gaol or prison; nor shall carry any such
“ person to any gaol or prison within four and twenty
“ hours from the time of such arrest, unless such person
“ or persons so arrested shall refuse to be carried to some
“ safe and convenient dwelling-house of his, her, or their
“ own nomination or appointment, within a city, borough,
“ cor-

“ corporation, or market town, in case such person or persons shall be there arrested; or within three miles from the place where such arrest shall be made, if the same shall be made out of any city, borough, corporation, or market town, so as such dwelling-house be not the house of the person arrested, and be within the county, riding, division, or liberty, in which the person under arrest was arrested; and then and in any such case it shall be lawful to and for any such sheriff, or other officer or minister, to convey or carry the person or persons so arrested, and refusing to be carried to such safe and convenient dwelling-house as aforesaid, to such gaol or prison as he, she, or they may be sent to by virtue of the action, writ, or process against him, her, or them.”

† *Seft.* 13. By 32. Geo. 2. c. 28. f. 2. it is further enacted, Nor may officer take for the lodging, &c. of such prisoner, more than shall be allowed.

“ That no sheriff, under-sheriff, bailiff, serjeant at mace, or other officer or person, shall at any time or times hereafter, take or receive any other or greater sum or sums for one or more night’s lodging, or for a day’s diet, or other expences of any person or persons under arrest, on any writ, action, attachment, or process, other than what shall be allowed as reasonable in such cases by some order or orders already made, or which shall hereafter be made by the justices of the peace at some general or quarter sessions which shall be held for the county, riding, division, city, town, or place where such arrest or taking shall be, who are hereby authorized and required, with all convenient expedition, to make some standing order or orders for ascertaining such charges and expences within their respective counties, ridings, divisions, cities, towns, and jurisdictions, if the same hath or have not already been there made; and if any such order or orders hath or have been there already made, such justices for the time being, at their respective general or quarter sessions, are hereby authorized and required to vary or alter the same, from time to time, as they shall see occasion; and also are hereby required to cause a copy of every such order, and of every variation or alteration thereof, signed by the clerk of the peace of every such county, riding, division, city, town, or place respectively, to be put and kept up in some conspicuous place in the sessions house, or some other proper place, of every such respective county, riding, division, city, town, or place as such justices shall order, so as the same may be there seen and examined as occasion may require.”

† *Seft.* 14. By 32. Geo. 2. c. 28. f. 3. And to the intent that no person may suffer by reason of his ignorance of the pro-

Sheriffs, &c.
to deliver
printed copies
of these
clauses to bail-
iffs, &c.

provisions made by this act, it is further enacted, " That all
" and every sheriff, under-sheriff, and bailiff of any liberty,
" and also the respective secondaries and clerk fitters in the
" respective compters in *London*, and all other persons in-
" trusted with the execution of process, or who shall enter
" any actions, or make any warrant or warrants, or any
" writ or process, in order to have the same executed, shall
" deliver a printed copy of the several clauses contained in
" this act relating to bailiffs, serjeants, and other officers
" and persons who shall be employed under them respec-
" tively to execute any writ, process, or attachment, or who
" shall arrest any person on any action which shall be en-
" tered, or otherwise, within their respective sheriffwicks
" or jurisdictions, to every such bailiff, serjeant, officer,
" and other person, and shall make it part of the condition
" of every security or bond which shall be given or made
" to any such sheriff or under-sheriff, or bailiff of any li-
" berty, by any bailiff, serjeant at mace, or other officer or
" person who shall be employed or intrusted to execute any
" such writ or process as aforesaid under him, them, or any
" of them, that every such bailiff, serjeant at mace, or
" officer, and other person respectively, shall and will shew
" and deliver a copy of the said clauses to every person he
" shall arrest by virtue of any process, action, writ, or at-
" tachment, or under any warrant made out thereon, and
" carry or go with to any publick or other house where any
" liquor shall be sold; and also shall and will permit every
" such person who shall be so arrested, or any friend of him
" or her, to read over the same clauses before any liquor,
" meat, or victuals shall be at any such publick or other
" house called for, or brought to any such person who shall
" be so under arrest there; and in case any bailiff, serjeant
" at mace, or other officer or person, shall in any respect
" offend in the premises, every such offence, besides the
" breach of the condition of every such security bond, shall
" be accounted and deemed a misdemeanor in the execution
" of the process or action on which any such person was
" arrested, and shall be punishable as such by virtue of this
" act."

Sheriffs and
gaolers to al-
low debtors in
custody to send
for, or have
brought to
them, victuals
and beer from
what place
they shall
think fit;

† *Stat. 15.* By 32. Geo. 2. c. 28. s. 4. it is further enacted,
" That every sheriff, under-sheriff, bailiff of any liberty,
" gaoler and keeper of any prison or gaol, and other person
" and persons, to whose custody or keeping any one hath
" been, or hereafter shall be arrested, taken, committed, or
" charged in execution, by virtue of any writ, process, or
" action, or attachment, shall at all times hereafter permit
" and suffer every such person and persons, during his, her,
" and their respective continuance under arrest or in cus-
" tody,

“ tody, or in execution for any debt, damages, costs, or
 “ contempt, at his, her, and their free will and pleasure,
 “ to send for, or have brought to him, her, or them, at
 “ seasonable times in the day-time, any beer, ale, victuals,
 “ or other necessary food, from what place he, she, or they
 “ shall think fit; or can have the same; and also to have
 “ and use such bedding, linen, and other necessary things,
 “ as he, she, or they shall have occasion for and think fit,
 “ or shall be supplied with, during his, her, or their con-
 “ tinuance under any such arrest or commitment, without
 “ purloining or detaining the same, or any part thereof, or
 “ enforcing or requiring him, her, or them, to pay for the
 “ having or using thereof, or putting any manner of re-
 “ straint or difficulty upon him, her, or them. in the using
 “ thereof, or relating thereto; and no such prisoner or pri-
 “ soners shall pay any thing in respect thereof to any such
 “ sheriff, under-sheriff, bailiff of any liberty, gaoler, keeper,
 “ or other person as aforesaid.”

and to have
 and use such
 bedding and
 linen, &c.

CHAPTER THE FORTY-SEVENTH

CONTINUED.

O F

RETURNING FROM TRANSPORTATION.

Transporta-
tion to Ame-
rica.

† *Sec. 1.* BY 4. Geo. 1. c. 11. f. 1. "All offenders convicted of grand or petit larceny, or any other felonious taking, except the buying or receiving of stolen goods, whose crimes are *within* the benefit of clergy, and for which they are liable only to be burned in the hand or whipped; and also all offenders whose crimes, on conviction, exclude them from the benefit of clergy, to whom his majesty shall extend his royal mercy, on condition of *such* transportation, signified under THE GREAT SEAL, by one of the principal secretaries of state, shall and may be transported to *America* for seven years."

Sec. 2. By 4. Geo. 1. c. 11. f. 1. "All offenders convicted of knowingly buying or receiving stolen goods, to whom such conditional mercy shall be extended generally, shall be transported to *America* for the term of fourteen years, or such other term as shall be made part of such condition."

Sec. 3. By 4. Geo. 1. c. 11. f. 2. "If any offender or offenders so ordered to be transported for any term of seven years or fourteen years, or other time or times as aforesaid, shall return into any part of *Great Britain* or *Ireland* before the end of his or their said term, he or she so returning as aforesaid, shall be liable to be punished as any person attainted of felony without the benefit of clergy, and execution shall and may be awarded against such offender or offenders accordingly." PROVIDED NEVERTHELESS, "That the king may at any time pardon, and dispense with any such transportation, and allow of the return of any such offender or offenders from *America*, upon the terms as described in the act."

Sec.

† *Señ.* 4. And whereas some felons ordered for transportation have already, and others may, come on shore, and return to *Great Britain* before they have been actually transported to *America*; or may break gaol, or escape before such transportation; it is thereupon enacted, by 6. Geo. 1. c. 23. s. 6. “ That if any felon or felons who shall be ordered for transportation, shall be afterwards at large without some lawful cause, before the expiration of the term for which such felon or felons was, were, or shall be ordered to be transported, all and every such person and persons, being thereof lawfully convicted, shall suffer death as in cases of felony without benefit of clergy.”

† *Señ.* 5. And by 6. Geo. 1. c. 23. s. 7. To the intent that such conviction may be as little trouble as possible, it is further enacted, “ That such offender may be tried either before justices of assize, *oyer* and *terminer*, or gaol delivery for the county, city, or place from whence he was ordered to be transported; and that the clerk of the assize and the clerk of the peace where such orders for transportation shall be made, shall, at the request of the prosecutor, or any other in his majesty’s behalf, certify a transcript, briefly and in few words, containing the effect and tenor of every indictment and conviction of such man or woman, and of the order or contract for his or her transportation, to the justices of assize, *oyer* and *terminer*, or gaol delivery, where such man or woman shall be indicted; which shall, on production of it, be a sufficient proof of the former conviction and order for transportation.” Mode of trial.

† *Señ.* 6. By 16. Geo. 2. c. 15. IT IS RECITED, “ That many felons who had agreed, upon certain conditions, to transport themselves, either for life, or for some term or number of years, had already, and might hereafter come on shore or return:” AND ENACTED, “ That if any felon or other offender already ordered, or hereafter to be ordered for transportation, or who hath already, or hereafter shall agree to transport him or herself, on certain conditions, to *America*, either for life or any number of years, shall be afterwards at large within any part of *Great Britain*, without some lawful cause, before the expiration of the term for which he or she were so ordered to be transported, or had so agreed to transport him or herself; all and every such person or persons being thereof lawfully convicted, shall suffer death without benefit of clergy.” Convicts transporting themselves, &c.

† *Seft.* 7. By 8. Geo. 3. c. 15. IT IS RECITED, "That offenders excluded from the benefit of clergy are frequently reprieved by the judge who tries them, and, upon his recommendation, may receive mercy on condition of transportation to *America* for life, or for the term of fourteen years:" AND ENACTED, "That where, upon such recommendation, such offenders shall receive mercy as aforesaid, signified by a principal secretary of state to the judge so recommending, it shall be lawful for every such judge to make an order for the immediate transportation of every such offender, which shall be as good and effectual, and be considered as if the same had been made during the continuance of the assizes at which such offender was, or shall be convicted. But if such offender so ordered for transportation shall be afterwards at large without in any part of *Great Britain*, without some lawful cause, before the expiration of the term for which such offender shall have been ordered to be transported, every such person, being thereof lawfully convicted, shall suffer death without benefit of clergy, and shall be tried in like manner as *other felons* found at large before the expiration of their term."

Transportation beyond the seas.
Continued to the 1st of June 1787, by 24. Geo. 3. c. 56.
Barrington on the Statutes, p. 445 to 447.

† *Seft.* 8. But *America* having at length separated from its connection with *Great Britain*, the punishment of felons and other offenders by transportation to the plantations, was attended with many difficulties; and it is therefore enacted by 19. Geo. 3. c. 74. "That when any person in *England* or *Wales* shall be lawfully convicted of grand or petit larceny, or any other crime for which he is liable to be transported to *America*, such person shall, if the court shall think fit, be ordered to be transported to any parts beyond the seas, whether the same be situated in *America* or elsewhere, in such and the like manner, and for the same term, as and for which such person is or shall be liable to be transported to *America*."

(a) For the form in which conditional pardons are now worded, vide B. 2. c. 37.

† *Seft.* 9. And by 19. Geo. 3. c. 74. it is further enacted, "That when any such person, who shall be so convicted, shall, in consequence thereof, be ordered to be transported to any parts beyond the seas, or if his majesty shall extend his mercy to any offender, convicted or attainted of any felony excluded from clergy, upon condition of (a) transportation to any parts beyond the seas as aforesaid, then in any such cases all laws, statutes, usages, and customs now in force with regard to transportation to *America*, and their punishment for being afterward at large within any part of *Great Britain* before the expiration of the several terms for which they were ordered to be transported,

“ ported, or had agreed to transport themselves, and particularly the several provisions contained in the 4. Geo. 1. c. 11. 6. Geo. 1. c. 23. 16. Geo. 2. c. 15. and the 8. Geo. 3. c. 15. shall take place, and be in force and enure, with regard to the transportation of such offenders, and with regard to their punishment for being afterwards at large as aforesaid, in like manner as if the same had been repeated, and specially inserted in this act.”

† *Secl.* 10. By 19. Geo. 3. c. 74. f. 27. it is also enacted, ^{Labour on board the hulks.}
 “ That male offenders convicted of any crime, except petit larceny, for which they are liable to transportation, may in lieu thereof, if the Court shall think fit, be punished by being kept on board ships or vessels, (commonly called the hulks) and employed in raising sand, soil, or gravel from the river *Thames, &c. &c.* for such term, not less than one year, nor exceeding five years. Or, in case such offender shall be liable to be transported for fourteen years, not exceeding seven years, as the Court shall think fit to order and adjudge.”

† *Secl.* 11. By 19. Geo. 3. c. 74. f. 28. it is also enacted,
 “ That where any male offender shall be lawfully convicted of any robbery, or other felony without benefit of clergy, and mercy, notified in writing by a secretary of state as aforesaid, shall be extended to such offender, upon condition of being kept to hard labour during any specified term, such mercy may be allowed in the same manner as if there was a conditional pardon under the great seal, and the Court (a) may and shall order such offender to be kept to hard labour as aforesaid, for the time specified in the notification from the secretary of state.” ^{(a) Vide the act.}

† *Secl.* 12. By 19. Geo. 3. c. 74. it is further enacted, ^{N.B. This act inflicts the punishment of death upon those who being ordered to hard labour instead of being capitally punished, in any of the places of confinement mentioned in the act, shall break from their keepers or escape. But as this part of the act was never carried into execution, the insertion of it is omitted.}
 “ That if any person who hath been ordered to hard labour instead of transportation, shall break from the custody of the keepers, or escape, they shall be punished by an addition of three years to the term for which he or she, at the time of his or her breach of prison, or escape, was subject to be confined; and if such person so punished by such addition to the term of confinement, shall afterwards be convicted of a second escape or breach of prison, he or she shall be adjudged guilty of felony without benefit of clergy.”

Transportation to such places as the king shall appoint.

† *Sec. 13.* But from the difficulty of immediately finding proper places, beyond the seas, for the purposes of transportation; and it being found impracticable to carry all the provisions of the 19. Geo. 3. effectually into execution; it is enacted by 24. Geo. 3. *sect. 2. c. 56.* which has continuance to the 1st June 1787, That where offenders shall be convicted at the assizes or sessions in the manner and under the circumstances before mentioned (set forth more at large under title TRANSPORTATION at the end of Chapter 33, in the second Book) “of offences for which such offenders shall
“be liable to be transported, &c. it shall and may be lawful
“for the court to order and adjudge, that such offenders so
“convicted shall be transported beyond the seas for any
“term of years not exceeding the number for which they
“are liable to be transported. And that in every such case
“it shall and may be lawful for his majesty, by and with
“the advice of his privy council, to declare and appoint
“to what place or places, part or parts beyond the seas,
“either within his majesty’s dominions, or elsewhere out
“of his majesty’s dominions, such felons or other offenders
“shall be conveyed or transported.”

Death to return.

† *Sec. 14.* And by 24. Geo. 3. *c. 56. f. 5.* it is further enacted, “That if any offender who shall be so ordered, by
“any such Court as aforesaid, to be transported beyond the
“seas, or who shall agree to transport himself or herself,
“on certain conditions, either for life or any number of
“years, to any such place or places, part or parts, as shall
“be appointed by his majesty, in manner aforesaid, shall
“be afterwards at large in *Great Britain or Ireland*, without
“some lawful cause, before the expiration of the term for
“which such offender or offenders shall have been ordered
“to be transported beyond the seas, or shall have so agreed
“to transport himself or herself as aforesaid, every such
“offender being at large as aforesaid being thereof lawfully
“convicted, shall suffer death without benefit of clergy.”

N. B. The same mode of trial is appointed as by *sect. 3. supra.*

Offenders in Scotland may be transported.

† *Sec. 15.* By 25. Geo. 3. *c. 45.* it is further enacted, “That when any person or persons shall be lawfully convicted, before any Court competent for the trial of crimes
“in *Scotland*, of any offence for which the punishment of
“transportation may be inflicted, the Court may adjudge
“such person or persons to be transported beyond the seas,
“in like manner as is now in use; and his majesty, by and
“with the advice of his privy council, may declare and appoint
“what place or parts beyond the seas, either within
“his majesty’s dominions, or elsewhere out of his dominions, such offenders shall be conveyed or transported.”

† *Secl.* 16. And by 25. Geo. 3. c. 46. it is also further enacted, "That when his majesty shall extend his mercy to any offender under sentence of death in *Scotland* upon condition of transportation, signified by one of the principal secretaries of state, it shall be lawful for any Court, having authority, to allow such offender the benefit of a conditional pardon, and (except in cases where such offender shall be authorized by his majesty to transport himself) to order the same in the manner the act describes." (and judges may allow a pardon on that condition)

† *Secl.* 17. By 25. Geo. 3. c. 46. it is further enacted, "That if any offender in *Scotland* be ordered for transportation, and such order cannot be conveniently executed, with respect to the place in such order mentioned, it shall be lawful for any two or more of the judges of THE COURT OF JUSTICIARY to order that such offender shall be transported to any other part beyond the seas which shall have been appointed by his majesty as aforesaid." to such places as his majesty shall appoint.

† *Secl.* 18. And by 25. Geo. 3. c. 46. f. 3. it is enacted, "That if any offender or offenders who shall be so ordered by such Court as aforesaid to be transported beyond the seas, or who shall agree to transport himself or herself, on certain conditions, as aforesaid, or who shall be so ordered by two judges of THE JUSTICIARY, shall be afterwards at large in *Great Britain* or *Ireland*, without some lawful cause, before the expiration of the term for which such offender shall have been ordered to be transported beyond the seas, or shall have so agreed to transport himself or herself, or shall have been so ordered by two justices of THE COURT OF JUSTICIARY as aforesaid; every such offender, on being thereof lawfully convicted, shall suffer death as in cases of felony without the benefit of the clergy by the law of *England*; and such offender being found at large in *Scotland* may be tried there before any court of competent jurisdiction for the trial of the original offence."

Upon these statutes the following determinations have been made.

† *Secl.* 19. That if an act of parliament direct that an offender shall be transported without saying to what place, it shall be understood to the place where convicts are, at the place reserved legally transported, as formerly to *America*, and now to *Botany Bay*. By all the judges, on a case reserved by BATHURST, Justice.

Aickle's Case,
Cafes C. L.
303.

† *Sec.* 20. That the Daily Book of a prison in which commitments and discharges are entered, is good, and indeed the best evidence to prove the day from which the time of transportation takes place.

Old Bailey,
1785.

† *Sec.* 21. That if a convict, on his trial for returning from transportation before his time was expired, confesses the fact and acknowledge that he is the man, the Court will record such confession, but that otherwise the record of the conviction must be produced, and evidence given of his identity.

Maximilian
Miller's Case,
Cafes C. L. 69.

† *Sec.* 22. That if a convict be sentenced to transportation for seven years, and receive a *sign manual* promising him a pardon "on condition of his giving a security to "transport himself during that period within fourteen "days," and on his giving such security is discharged from prison, but neglect to transport himself within the fourteen days, he cannot be indicted for being unlawfully found at large before the term for which he received sentence of transportation had expired; for the *sign manual* and the recognizance entered into in consequence of it are good evidence that he was *lawfully* at large, although he had not substantially performed the condition on which the promise of pardon was granted.

Patrick Mc-
dan's Case,
Cafes C. L.
397.

† *Sec.* 23. That a prisoner convicted of a capital crime, whose sentence is respited during the king's pleasure, and who, on having received a pardon on condition of transportation for life, is afterwards found at large in *Great Britain* without lawful cause, shall, on his being indicted for returning from transportation and acquitted, be referred back to his original sentence.

Bath's Case,
Cafes C. L.
343.

† *Sec.* 24. It is also decided, that sentence of transportation may be a second time passed upon a prisoner, although the time for which he before received sentence of transportation be unexpired.

CHAPTER THE FORTY-SEVENTH

CONTINUED.

O F

TAKING A REWARD

T O

RESTORE STOLEN GOODS.

† *Secl.* 1. **BY** 4. Geo. II. c. 1. s. 4. IT IS RECITED, "That Persons tak-
 there are several persons who have secret ac- ing rewards
 quaintance with felons, and who make it their business to help persons to their stolen goods, and by that means gain for helping to
 money from them, which is divided between them and the stolen goods
 felons, whereby they greatly encourage such offenders :"
 guilty of fe-
 and therefore ENACTED, " That wherever any person
 " taketh money or reward, directly or indirectly, under
 " pretence or upon account of helping any person or per-
 " sons to any stolen goods or chattels, every such person so
 " taking money or reward as aforesaid, (unless such per-
 " son doth apprehend, or cause to be apprehended, such
 " felon who stole the same, and cause such felon to be
 " brought to his trial for the same, and give evidence against
 " him) shall be guilty of felony, and suffer the pains and
 " penalties of felony, according to the nature of the felony
 " committed in stealing such goods, and in such and the
 " same manner as if such offender had himself stole such
 " goods and chattels, in the manner, and with such circum-
 " stances as the same were stolen."

† *Secl.* 2. **By** 6. Geo. I. c. 23. s. 9. IT IS RECITED, Prosecuting to
 " That the practice of taking money to help persons to conviction any
 their stolen goods, and sharing it with the felons, is still person for tak-
 continued in defiance of the laws, and to the encouragement ing a reward
 of felons : " and therefore ENACTED, " That whoever for helping to
 " shall discover, apprehend and prosecute to conviction of stolen goods,
 " felony without benefit of clergy, any person or persons shall be enti-
 " for the said offence of taking money or other reward, di- tled to 40l.
 " rectly or indirectly, to help any person or persons to their 4. Geo. 1.
 " stolen goods, (such offender not having apprehended the c. 11. s. 4.
 " felon who stole the same, and brought him or her to trial
 " for

“ for the same, and given evidence against him or her as
 “ required by law) shall be entitled to a reward of forty
 “ pounds for every such offender so convicted as aforesaid,
 “ and shall have the like certificate and like payments
 “ made without fee or reward as any person or persons may
 “ be intitled unto for the apprehending, prosecuting and
 “ convicting of highwaymen by any law or laws for that
 “ purpose.”

Drinkwater's
 Case, Cases
 C. L. 15.

† *Sec.* 3. It seems to have been doubted, whether a
 person who receives money as a reward for helping another
 to stolen goods, can be prosecuted on the above statutes un-
 til the principal felon has been convicted.

CHAPTER THE FORTY-SEVENTH

CONTINUED.

O F

ADVERTISING A REWARD

FOR THE

RESTORATION OF STOLEN GOODS.

BY 25. Geo. 2. c. 36. IT IS RECITED, " That Person advertising a reward for return of things stolen or lost, " the advertising a reward with no questions asked, for the return of things which have been lost or stolen, is one great cause and encouragement of thefts and robberies ;" and therefore ENACTED, " That any person " publicly advertising a reward with no questions asked, " for the return of things which have been stolen or lost, " or making use of any words in such public advertisement, purporting that such reward shall be given or paid without seizing or making enquiry after the person producing such thing so stolen or lost, or promising or offering, in any such public advertisement, to return to any pawnbroker, or other person, who may have bought or advanced money by way of loan upon such thing so stolen or lost the money so paid or advanced, or any other sum of money or reward for the return of such thing, " and any person printing or publishing such advertisement, shall respectively forfeit the sum of fifty pounds for every such offence to any person who will sue for the same." and the printer to forfeit 50*l*.

CHAPTER THE FORTY-SEVENTH.

CONTINUED.

O F

BUYING STOLEN GOODS.

THE offence of buying and receiving stolen goods may be considered,

1. As to the buying and receiving stolen goods in general.
2. As to the buying and receiving stolen lead, iron, pewter, &c.
3. As to the buying or receiving jewels obtained by burglary or robbery.
4. As to the buying or receiving stores, &c. from ships by bumb-boats.

As to **THE FIRST POINT**, *viz.* The buying and receiving stolen goods in general.

Buyers of stolen goods reputed accessories to felony.

+ *Stat.* 1. By 3. Will. & Mary, c. 9. s. 4. IT IS RECITED, "That thieves and robbers are much encouraged to commit such offences, because a great number of persons make it their trade and business to deal in the buying of stolen goods;" and therefore ENACTED, "That if any person or persons shall buy or receive any goods or chattels that shall be feloniously taken or stolen from any other person, knowing the same to be stolen, he or they shall be taken and deemed an accessory or accessories to such felony after the fact, and shall incur the same punishment, as an accessory or accessories to the felony after the felony committed."

+ *Stat.* 2. By 1. Ann. st. 2. c. 9. s. 2. IT IS RECITED, "That buyers and receivers of stolen goods do oftentimes convey away and conceal the principal felons, so that they cannot be convicted of such principal felony, and thereby such buyers and receivers have escaped all manner of punishment."

punishment, which hath greatly encouraged the buying and receiving of such stolen goods:" for remedy whereof IT IS ENACTED, "That it shall and may be lawful to prosecute and punish every such person and persons buying or receiving any stolen goods, knowing the same to be stolen, as for a misdemeanor, to be punished by fine and imprisonment, although the principal felon be not before convicted of the said felony, which shall exempt the offender from being punished as accessory, if the principal shall be afterwards convicted."

Receivers of stolen goods may be punished, where the principal felon is not convicted.

† Sect. 3. By 5. Ann. c. 31. f. 5. IT IS RECITED, "That felons are much encouraged to commit such burglaries and felonies, because a great number of persons make it a trade to receive and buy of the said felons the goods so by them feloniously taken, and also do make it their business to harbour and conceal the said offenders after the said facts, knowing the said felonies and burglaries to have been by them committed:" and therefore ENACTED, "That if any person or persons shall receive or buy any goods or chattels that shall be feloniously taken or stolen from any other person, knowing the same to be stolen, or shall receive, harbour, or conceal, any burglars, felons, or thieves, knowing them to be so, shall be taken and received as accessory or accessories to the said felony or felonies; and being of either of the said offences legally convicted, by the testimony of one or more credible witnesses, shall suffer and incur the pains of death as a felon convict."

Buyers and receivers of stolen goods made accessories, &c.

† Sect. 4. By 5. Ann. c. 31. f. 6. provided, "That if any such principal felon cannot be taken, so as to be prosecuted and convicted for any such offence, yet nevertheless it shall and may be lawful to prosecute and punish every such person and persons buying or receiving any goods stolen by any such principal felon, knowing the same to be stolen, as for a misdemeanor, to be punished by fine and imprisonment, or other such corporal punishment as the Court shall think fit to inflict, although the principal felon be not before convict of the said felony, which shall exempt the offender from being punished as accessory, if such principal felon shall be afterwards taken and convicted."

If principal felon cannot be taken, accessory to be tried as for a misdemeanor.

† Sect. 5. By 4. Geo. I. c. 11. f. 1. "Persons convicted of buying and receiving stolen goods, knowing them to be stolen, may be transported for fourteen years."

(a) *Rex v.*
Davison,
 3. Burn 74.
 (b) *Cases Cro.*
Law.

† *Sec.* 6. It has been determined, that neither the receiving of *money* (a) nor *bank notes* (b), knowing the same to be stolen, are within the above statutes, for they are neither “goods, wares, nor merchandizes.”

Rex v. Wild,
Stra. 57.

† *Sec.* 7. And it has been determined, that if the principal is convicted, the accessory cannot be tried for the misdemeanor on these statutes.

CHAPTER THE FORTY-SEVENTH

CONTINUED.

O F

RECEIVING STOLEN LEAD, IRON, &c.

AS TO THE SECOND POINT, *viz.* The offence of buying and receiving stolen lead, iron, &c.

† *Stat. 1.* By 29. Geo. 2. c. 30. IT IS RECITED, “ That Buyers or receivers know-
 the pernicious practice of stealing lead, iron, copper, brass, ing, &c. trans-
 bell-metal and solder fixed to, or lying or being in or up- ported for
 on houses, out-houses, mills, warehouses, workshops, and 14 years.
 other buildings, areas, vaults, yards, gardens, orchards, or
 other places; and also the stealing of such materials from
 ships, barges, lighters, boats, and other vessels and craft, up-
 on navigable rivers, in ports of entry or discharge, creeks
 and docks belonging thereto, and also from off wharfs,
 keys and other places, is become a great and notorious evil,
 by reason of the difficulty in apprehending and convicting
 the thieves, and the still greater difficulty of discovering
 and convicting the buyers or receivers thereof; which
 buyers or receivers are the principal cause of the commission
 of such thefts: and in regard that the said offences are com-
 mitted in such close and clandestine manner, that there can
 be no witness or witnesses to the same, but such who is
 or are partakers of the offence: and whereas if the buyers
 and receivers of lead, iron, copper, brass, bell-metal or
 solder, knowing or having reasonable cause to suspect the
 same to be stolen, or unlawfully come by, were made
 original offenders, and punishable independent of the ap-
 prehension and conviction of the thief; and if the ap-
 prehending, prosecuting, and convicting the offenders in
 both kinds were rendered more easy and speedy, it might
 more effectually tend to the discovery and suppression of
 the said offences:” and for remedy thereof ENACTED,
 “ That every person who shall buy or receive any lead,
 “ iron, copper, brass, bell metal or solder, knowing the
 “ same

“ same to be unlawfully come by, or shall privately buy
 “ or receive any stolen lead, iron, copper, brass, bell-metal
 “ or folder, by suffering any door, window or shutter to
 “ be left open or unfastened between sun-setting and sun-
 “ rising for that purpose, or shall buy or receive the same,
 “ or any of them, at any time in any clandestine manner
 “ from any person or persons whatsoever, shall, being
 “ thereof convicted by due course of law, although the
 “ principal felon or felons has not or have not been con-
 “ victed of stealing the same, be transported for fourteen
 “ years to any of his majesty’s colonies or plantations in
 “ *America*, according to the laws in force for the transpor-
 “ tation of felons.”

Where cause
 of suspicion,
 justice to is-
 sue search
 warrant.

† *Stat. 2.* By 29. Geo. 2. c. 30. f. 2. it is further en-
 acted, “ That it shall and may be lawful for any one jus-
 “ tice of the peace, upon complaint made to him upon
 “ oath by any credible person, that there is cause to sus-
 “ pect stolen lead, iron, copper, brass, bell-metal or folder,
 “ is concealed in any dwelling-house, out-house, yard,
 “ garden or other place or places, by warrant under his
 “ hand and seal, to cause every such dwelling-house, out-
 “ house, yard, garden and place to be searched in the day-
 “ time; and if any lead, iron, copper, brass, bell-metal
 “ or folder, suspected to be stolen, shall be found therein,
 “ to cause the same, and the person or persons in whose
 “ house, out-house, yard, garden or other place the same
 “ shall be found, to be brought before any two or more
 “ justices of the peace for the same county, city, riding,
 “ division, liberty or place; and if the said person or
 “ persons shall not give an account, to the satisfaction of
 “ such justices, how he, she, or they came by the same;
 “ or shall not, within some convenient time to be set by
 “ the said justices, produce the party or parties of or from
 “ whom he, she, or they, bought or received such stolen
 “ lead, iron, copper, brass, bell-metal, or folder; that then
 “ the said person or persons so offending shall be deemed
 “ and adjudged guilty of a misdemeanor.”

Suspected
 persons, in the
 night-time,
 may be appre-
 hended, &c.

† *Stat. 3.* By 29. Geo. 2. c. 30. f. 3. it is further en-
 acted, “ That every constable, headborough or tithing-
 “ man, in every county, city, town corporate, or other
 “ place where they shall be officers, and every beadle
 “ within his ward, parish, or district, and every watch-
 “ man, during such time only as he is on his duty, shall
 “ and may apprehend, or cause to be apprehended, all
 “ and every person or persons who may reasonably be
 “ suspected of having or carrying, or any ways convey-
 “ ing, at any time after sun-setting and before sunrising,
 “ any

“ any lead, iron, copper, brass, bell-metal or solder suspected to be stolen or unlawfully come by ; and the same, together with such person or persons, as soon as conveniently may be, to convey or carry before any two or more justices of the peace for the county, city, riding, division, liberty, or place aforesaid ; and if the person or persons so apprehended conveying any such lead, iron, copper, brass, bell-metal or solder, shall not produce the party or parties from whom he, she, or they bought or received the same, or some other credible witness to depose upon oath the sale or delivery of the said lead, iron, copper, brass, bell-metal or solder (which oath any such justices are hereby impowered to administer), or shall not give an account, to the satisfaction of any two or more of such justices, how he, she, or they came by the same, that then the said person or persons so apprehended shall be deemed and adjudged guilty of a misdemeanor.”

† Sect. 4. By 29. Geo. 2. c. 30. s. 4. it is further enacted, “ That where any person or persons shall be convicted of either of the misdemeanors aforesaid, it shall and may be lawful for any two or more of such justices to cause such lead, iron, copper, brass, bell-metal or solder, to be deposited in the hands of the churchwardens and overseers of the poor of the place where such lead, iron, copper, brass, bell-metal or solder were found, or in any other convenient place, for any time not exceeding thirty days ; and in the mean time to order the said churchwardens and overseers of the poor, or one of them, in all and every of the parishes within the bills of mortality, to insert an advertisement in some public paper, and in every other parish or place to cause notice to be given by some public cryer, and by fixing on the church or chapel door notice describing such lead, iron, copper, brass, bell-metal or solder, and where the same shall be so deposited, to the end that persons having lost such lead, iron, copper, brass, bell-metal or solder, may come and claim the same, or any reputable person on their behalf ; and in case any person or persons can prove their property to the said lead, iron, copper, brass, bell-metal or solder, upon oath, to the satisfaction of any two or more of such justices of the peace for such county, city, riding, division, liberty or place, that then such justices shall order restitution of such lead, iron, copper, brass, bell-metal, or solder, to the owner or owners thereof, after paying the reasonable charges of removing, depositing and giving public notice of the same ; and

In which cases, materials to be deposited with the churchwardens, &c.

Owner proving his property, to have them.

“ if

“ if at the end of the said thirty days no person or persons shall come and prove his, her, or their property, nor any reputable person, on his or their behalf, to such lead, iron, copper, brass, bell-metal or solder, the same to be sold for the best price that can reasonably be had ; and after deducting the charges as aforesaid, one moiety of the money arising from such sale to be given to the person or persons who shall apprehend the party or parties guilty of the misdemeanors aforementioned, or either of them; and the other moiety thereof to the poor of the parish where such offence shall be committed (if it is known where), or else where such convictions shall be made.”

Person to whom any such materials shall be brought may in suspected case stop, &c.

† *Stat. 5.* By 29. Geo. 2. c. 30. s. 5. it is further enacted, “ That every person to whom any lead, iron, copper, brass, bell-metal or solder shall be brought and offered to be sold, pawned or delivered, shall and is hereby empowered and required (there being reasonable cause to suspect that such lead, iron, copper, brass, bell-metal or solder, was stolen or unlawfully come by) to apprehend, secure, and carry before a justice of the peace for the county, city, riding, division, liberty or place where the same shall be so brought or offered (having it in his or her power so to do), the person or persons so bringing or offering the same, together with such lead, iron, copper, brass, bell-metal or solder ; and such person or persons so apprehended shall be dealt with, and such lead, iron, copper, brass, bell-metal or solder, shall be deposited and disposed of in the same manner as if he, she, or they had been apprehended by the constable, headborough, tithingman, beadle or watchman, as aforesaid ; and if it shall appear upon the oath of any person, notwithstanding such person or persons was or were concerned in the stealing the same, if corroborated with other credible circumstances, to the satisfaction of two or more justices of the peace for the county, city, riding, division, liberty or place, where the same shall be so brought or offered as aforesaid, that there was reasonable cause to suspect such lead, iron, copper, brass, bell-metal or solder, was stolen or unlawfully come by, and that the person or persons to whom such lead, iron, copper, brass, bell-metal or solder, was so brought, or offered, did not (having it in his, her, or their power so to do) apprehend, secure and carry before a justice of the peace as aforesaid, the person or persons who so brought or offered the same, that then the person or persons to whom such lead, iron, copper, brass, bell-metal or solder was so brought or offered, shall be deemed and adjudged guilty of a misdemeanor.”

† *Stat.*

† *Stat. 6.* By 29. Geo. 2. c. 30. s. 6 it is further enacted, “ That every person deemed and adjudged guilty of a misdemeanor, in having in his, her, or their possession, any lead, iron, copper, brads, bell-metal, or solder, suspected to be stolen, or unlawfully come by, and not producing the party or parties of whom he, she, or they bought or received the same, nor giving a satisfactory account how he, she, or they came by the same or in having, carrying, or conveying of lead, iron, copper, brads, bell-metal or solder, suspected to be stolen or unlawfully come by, and not producing the party or parties from whom he, she, or they bought or received the same, nor any credible witness to depose upon oath the sale or delivery thereof, nor giving a satisfactory account how he, she, or they came by the same (as the case shall be), shall, for every such misdemeanor, forfeit for the first offence the sum of forty shillings, and for the second offence the sum of four pounds, and for every subsequent offence the sum of six pounds; and that every person deemed and adjudged guilty of the misdemeanor of neglecting to apprehend, secure, and carry before a justice of the peace the person or persons (having it in his, her, or their power so to do) who brought or offered to sell, pawn or deliver any lead, iron, copper, brads, bell-metal or solder (as the case shall be) suspected to be stolen or unlawfully come by, shall, for every such misdemeanor, forfeit for the first offence the sum of twenty shillings, and for the second offence the sum of forty shillings, and for every subsequent offence the sum of four pounds; all which said respective forfeitures shall and may be levied by distress and sale of the goods and chattels of every such offender (rendering to him or her the overplus, after charges of the said distress and sale deducted) by warrant under the hands and seals of any two or more of such justices before whom such offender was deemed and adjudged guilty; which forfeiture shall be paid, one moiety thereof to the informer, and the other moiety thereof to the overseers of the poor, for the use of the poor of the parish or place where such offence was committed (if it is known where), or else where such conviction shall be made; and if no sufficient distress shall be found, whereupon to levy the said respective forfeitures, then the said justices shall and may commit every such offender, so respectively deemed and adjudged guilty as aforesaid, to the common gaol or other prison, or house of correction, within their jurisdiction, without bail or mainprize, for the space of one month for the first offence, and for the se-

Persons convicted of a misdemeanor, &c. and not accounting satisfactorily for the same, to forfeit, &c.

Forfeiture how levied, &c.

For want of distress, offender to be committed.

“ cond offence for the space of two months, and for
 “ every subsequent offence until such offender shall be
 “ discharged by order of the court of general or quarter
 “ sessions.”

Conviction to
 be certified to
 the quarter-
 sessions.

† *Stat.* 7. By 29. Geo. 2. c. 30. s. 7. it is further en-
 acted, “ That every conviction of any offender, in any
 “ of the aforesaid misdemeanors, shall be certified by two
 “ or more of the justices of the peace, making the same,
 “ to the next general or quarter sessions of the peace, to be
 “ filed and entered amongst the records of the said sessions ;
 “ which said conviction shall be good and effectual in law to
 “ all intents and purposes, and shall not be quashed, set aside,
 “ or adjudged void or insufficient for want of any form
 “ of words whatsoever, nor be liable to be removed by *ce-
 riorari* into his majesty’s court of *king’s bench*, but shall be
 “ deemed and taken to be final, to all intents and purposes
 “ whatsoever.”

Conviction
 not to be
 quashed, or
 removed.

Felon con-
 victing the
 buyers or re-
 ceivers, in-
 titled to his
 pardon.

† *Stat.* 8. By 29. Geo. 2. c. 30. s. 8. it is further
 enacted, “ That if any person, being out of prison, shall
 “ commit any felony, by stealing any lead, iron, copper,
 “ brass, bell-metal or folder, and afterwards discover two
 “ or more persons who shall buy or receive any stolen
 “ lead, iron, copper, brass, bell-metal or folder, knowing
 “ the same to be stolen, so as two or more of the per-
 “ sons discovered shall be convicted of such buying or re-
 “ ceiving, he, she, or they so discovering shall have, and
 “ be intitled to, the gracious pardon of his majesty, his
 “ heirs and successors, for all such felonies by him or her
 “ committed, at any time or times before such discovery
 “ made, which pardon shall be likewise a bar to any appeal
 “ brought for such felony.”

And convict-
 ing any of a
 misdemeanor,
 in not appre-
 hending, &c.
 is discharged
 from prosecu-
 tion for such
 felony.

† *Stat.* 9. By 29. Geo. 2. c. 30. s. 9. it is further
 enacted, “ That if any person shall be concerned in the
 “ stealing any lead, iron, copper, brass, bell-metal or
 “ folder, and shall afterwards, being out of prison, dis-
 “ cover any person to whom he, she, or they shall have
 “ offered to sell, pawn or deliver any stolen lead, iron,
 “ copper, brass, bell-metal or folder, so as such person be
 “ convicted of the misdemeanor of not apprehending, se-
 “ curing and carrying him, her, or them before a justice as
 “ aforesaid, that then the person making such discovery
 “ shall not be liable to be prosecuted for stealing the lead,
 “ iron, copper, brass, bell-metal or folder, so offered as
 “ aforesaid.”

† *Stat.*

+ *Seft.* 10. By 29. Geo. 2. c. 30. s. 10. it is further enacted, " That if any action or fuit shall be commenced or brought against any justice or justices of the peace, or other officer or person whatsoever, for doing or causing to be done any thing in pursuance of this act, concerning the said offences, the same shall be commenced or brought within six months after such cause of action has accrued; and the defendant in such case may plead the general issue, and give the special matter in evidence; and if upon such action, a verdict shall be given for the defendant, or the plaintiff become nonsuited, or discontinue his action, the defendant shall have treble costs." Limitation of actions.

+ *Seft.* 11. By 29. Geo. 2. c. 30. s. 11. it is provided, " That nothing herein contained shall extend, or be construed to extend to repeal any former law now in being, for the punishment of such offenders; PROVIDED ALSO, that such offender, after having been punished by this act, shall not for the same offence be afterwards punished or be liable to be punished by any such former law." Former laws not vacated, nor offenders liable to double punishment.

+ *Seft.* 12. By 21. Geo. 3. c. 69. IT IS RECITED, " That the above statute 29. Geo. 2. c. 30. has been found by experience to tend to good and useful purposes, and to prevent many felonies being committed in respect to the several articles therein mentioned; but the metal called pewter not being mentioned or included in the said act, evil-disposed persons have taken advantage thereof, and the stealing of pewter pots, and other pewter, and the buying and receiving such pewter pots, and other pewter, knowing the same to be stolen, is become a great and notorious evil:" and therefore ENACTED, " That every person who shall buy or receive any pewter pot, or other vessel, or any pewter in any form or shape whatever, knowing the same to be stolen or unlawfully come by; or shall privately buy or receive any stolen pewter, by suffering any door, window or shutter, to be left open or unfastened between sun-setting and sun-rising, for that purpose; or shall buy or receive the same at any time, in any clandestine manner, from any person or persons whatsoever; shall, being thereof convicted by due course of law, although the principal felon or felons has not or have not been convicted of stealing the same, be transported, in like manner as other felons are directed to be transported by the laws and statutes of this realm, for any time not exceeding seven years, or be kept and detained in prison, and therein kept to hard labour, for any" Every person who shall buy or receive any pewter pot, or other pewter, knowing the same to be stolen, &c. shall, on conviction for a felony, be transported for seven years. &c.

“time not exceeding three years, nor less than one year ;
 “and within that time (if such Court shall think fit-
 “ting) such offender or offenders shall be once, or of-
 “tener, but not more than three times, publicly whipped.”

Hoster 74.

+ *Stat. 13.* But these statutes, which make the receivers of stolen goods accessories to the felony, being understood to make them accessories only in such cases where by law an accessory may be, do not extend to cases where the property stolen does not amount to the value of twelve-pence.

But to suppress the practice of committing such minute thefts,

Every person buying or receiving stolen goods shall be deemed guilty of a misdemeanor, and prosecuted accordingly.

+ *Stat. 14.* By 22. Geo. 3. c. 58. IT IS RECITED, “That the pernicious practices of buying and receiving stolen goods are become a great evil, by reason of the difficulty of discovering the persons guilty of the same, and of the insufficiency of the laws now in being for the punishment of such offenders in certain cases ;” AND ENACTED, “That in all cases whatsoever where any goods or chattels (except lead, iron, copper, brass, bell-metal, and solder) shall have been feloniously taken or stolen, whether the offence of the person or persons so taking or stealing the same, shall amount to grand larceny or some greater offence, or to petit larceny only (except where the person or persons actually committing the felony shall have been already convicted of grand larceny, or some greater offence), every person who shall buy or receive any such goods and chattels, knowing the same to have been so taken or stolen, shall be held and deemed guilty of, and may be prosecuted for, a misdemeanor, and shall be punished by fine, imprisonment, or whipping, as the court of quarter-sessions, who are hereby impowered to try such offender, or as any other Court before which he, she, or they, shall be tried, shall think fit to inflict ; although the principal felon or felons be not before convicted of the said felony, and whether he, she, or they, is or are amenable to justice or not ; any law or statute to the contrary notwithstanding : and in cases where the felony actually committed shall amount to grand larceny, or to some greater offence, and where the person or persons actually committing such felony shall not be before convicted, such offender or offenders shall be exempted from being punished as accessory or accessories, if such principal felon or felons shall be afterwards convicted.”

“ (there being reasonable cause to suspect that such goods .
 “ or chattels were stolen) to apprehend, secure, and carry
 “ before a justice of the peace for the county, city, town
 “ corporate, riding, division, liberty, or place, where the
 “ same goods and chattels shall be so brought or offered to be
 “ sold, pawned, or delivered (having it in his or her power so
 “ to do), the person and persons bringing or offering the same.”

Persons under
 15 years of
 age, charged
 with felony,
 discovering
 receivers, shall
 be pardoned.

† *Stat.* 18. By 22. Geo. 3. c. 30. s. 5. it is further enacted,
 “ If any person or persons, being out of custody, or in
 “ custody, if under the age of fifteen years, upon any
 “ charge of felony within benefit of clergy, shall have
 “ committed any felony, and shall afterwards discover two
 “ or more persons who shall have bought or received any
 “ goods or chattels which shall have been feloniously
 “ stolen or taken from any other person or persons, know-
 “ ing the same to be stolen, so as two or more of the per-
 “ sons discovered shall be convicted of such buying or re-
 “ ceiving, he, she, or they, so discovering, shall have and
 “ be entitled to the gracious pardon of his majesty, his
 “ heirs and successors, for all such felonies by him or her
 “ committed at any time or times before such discovery made,
 “ which pardon shall be likewise a bar to any appeal brought
 “ for such felony.”

Not to repeal
 any former
 law, &c.

† *Stat.* 19. By 22. Geo. 3. c. 30. s. 6. it is provided,
 “ That nothing herein contained shall extend to repeal any
 “ former law now in being for the punishment of such of-
 “ fenders ; and provided also, that such offender, after hav-
 “ ing been prosecuted and convicted under this act, shall
 “ not, for the same offence, be afterwards punished, or liable
 “ to be punished, by any such former law.”

Rex v. Baxter
 5. Term Rep.
 83.

† *Stat.* 20. It hath been determined, that in an indict-
 ment against a receiver under this statute, it is not necessary
 to aver that the principal had not been convicted.

As to THE THIRD POINT, viz. The offence of buying
 and receiving stolen jewels, &c.

Persons re-
 ceiving jewels,
 &c. knowing
 them to be
 stolen, triable
 as well before
 as after con-
 viction of
 principal fe-
 lons ; and on
 conviction to
 be transported
 for 14 years.

† *Stat.* 21. By 10. Geo. 3. c. 48. IT IS RECITED, “ That the
 facility with which stolen jewels, and gold and silver plate,
 are disposed of, is one principal cause of the frequent com-
 mission of burglaries and highway robberies ; and the pre-
 sent laws against the receiving of stolen goods, are found
 insufficient to deter persons from that practice :” there-
 fore IT IS ENACTED, “ That every person, who shall buy
 “ or receive any stolen jewel or jewels, or any stolen gold
 “ or silver plate, watch or watches, knowing the same to
 “ have been stolen, shall, in all cases where such jewel or
 “ jewels,

“ jewels, or gold or silver plate, shall have been feloniously stolen, accompanied with a burglary actually committed in stealing the same, or shall have been feloniously taken by a robbery on the highway, he triable as well before conviction of the principal felon in such felony and burglary or robbery, whether he shall be in or out of custody, as after his conviction: and if any person so buying or receiving such jewel or jewels, or gold or silver plate, shall be convicted thereof, he shall be adjudged guilty of felony, and be transported to some of his majesty's plantations in *America* for the space of fourteen years, according to the laws in force for transportation of felons.”

As to THE FOURTH POINT, viz. The offence of receiving stores, &c. from ships by bumb-boats.

† *Seft.* 22. By 2. Geo. 3. c. 28. IT IS RECITED, “ That Persons navigating BUMB-
many ill-disposed persons, using and navigating upon the river *Thames* certain boats, commonly called bumb-boats, BOATS on the
and other vessels, under pretence of selling liquors of different sorts; and also slops, tobacco, brooms, fruit, greens, and receiving
gingerbread, and other such like ware and things to and amongst the seamen and labourers employed in and about ships, vessels, and other craft there, do frequently take occasion to cut, damage, and spoil the cordage, cables, buoys, and buoy-ropes, and the headfasts, and other fasts belonging to such ships, vessels, and craft, and fraudulently carry away the same; likewise encourage such seamen and labourers to dispose of such cordage, cables, and buoys, and such goods, merchandizes, materials, and stores, secretly and unlawfully, whereby great losses are sustained by merchants and owners of such ships, vessels, and other craft, in the said river:” for remedy whereof it is ENACTED,
“ That if any person or persons shall use, let out to hire, lend, or navigate, or shall be aiding or assisting in using or navigating upon the said river, any bumb-boat, or other boat, for the purpose of selling, bartering, exchanging, or exposing to sale, to and amongst the seamen and labourers employed in and about ships, vessels, or other craft, any liquors, slops, tobacco, brooms, or any fruit, greens, gingerbread, or other such like ware; and shall sell, barter, exchange, or expose to sale as aforesaid, any sort of liquor, or any slops, tobacco, brooms, or any fruit, greens, gingerbread, or other such like ware or things, in, from, or out of any bumb-boat, or other boat (other than and except such bumb-boats, and other boats and vessels as shall be entered in the office of the master, wardens, and assistants of the guild, fraternity, or brotherhood,
“ hood,

“ hood, of the most glorious and undivided *Trinity*, and of
 “ *Saint Clement*, in the parish of *Deptford Strand*, in the
 “ county of *Kent*, in manner herein-after mentioned, and
 “ shall be used and navigated for the purposes aforesaid, in
 “ the day-time, between sun-rising and sun-setting only);
 “ or if any person or persons shall take in exchange, or by
 “ way of barter, or shall unlawfully receive, or procure to
 “ be delivered to them, any ropes, cordage, tackle, apparel,
 “ furniture, stores, materials, or any part of any cargo or
 “ loading of any ships or vessels in the said river; all and
 “ every such person or persons respectively shall, upon
 “ conviction thereof before any justice or justices of the
 “ peace of and within any county, city, division, liberty,
 “ or place adjoining to the said river, upon the oath of one
 “ or more credible person or persons, be deemed guilty of
 “ a misdemeanor; and it shall and may be lawful for any
 “ person or persons to apprehend and detain all persons
 “ then on board such boat, and also to seize, search, and
 “ detain in some place of safety, such boat, and the tackle,
 “ apparel, and furniture, and loading thereof; and the
 “ person and persons so apprehended shall be (as soon as
 “ conveniently may be) conveyed before such justice or
 “ justices of the peace as aforesaid; and such boat, with the
 “ said tackle, apparel, furniture, and loading, thereof, shall,
 “ upon such conviction as aforesaid, be forfeited and dis-
 “ posed of as is herein-after mentioned.”

Bumb-boats
 shall be regis-
 tered at the
 Trinity-house.

† *Stat. 23.* By 2. Geo. 3. c. 28. s. 2. it is enacted, “ That
 “ every bumb-boat, or other boat whatsoever, used and na-
 “ vigated for the purposes aforesaid, upon the said river,
 “ between *London-bridge* and the *Lower Hope Point*, shall
 “ be entered by the owner or owners thereof with the
 “ master, wardens, and assistants, at their office at the
 “ *Trinity-house* in *Water-lane, London*, specifying the name
 “ or names, or place and places of abode of such owner or
 “ owners; to the intent that the said master, wardens, and
 “ assistants, may register every such entry, and deliver in
 “ writing to such owner or owners a number to be marked
 “ on one or more part or parts of every such bumb-boat, or
 “ other boat; and every such owner or owners shall cause
 “ the number so delivered to be forthwith marked, together
 “ with his, her, or their christian and surname or names,
 “ and place or places of abode, upon such part or parts of
 “ the said boat so entered as aforesaid, in such manner as
 “ the said master, wardens, and assistants shall, from time
 “ to time, direct and appoint, in pursuance of the au-
 “ thorities and directions herein-after given for that
 “ purpose.”

† *Sec. 24.* By 2. Geo. 3. c. 28. s. 3. it is provided, The register shall be renewed on every change of the property in such bomb-boat.
 “ That every time, and so often as the property of any such
 “ bomb-boat, or other boat, shall be varied or altered, the
 “ new owner or owners shall forthwith make a fresh entry
 “ of the same, and cause the number delivered in pursuance
 “ thereof to be marked on the said boat, together with his,
 “ her, or their Christian and surname or names, and place
 “ or places of abode, upon such part or parts of the said
 “ boat, and in like manner as is herein-before directed, at
 “ the first entering of any such boat.”

† *Sec. 25.* By 2. Geo. 3. c. 28. s. 4. it is further enacted, The Trinity Company shall number the register and mark the boats.
 “ That the said master, wardens, and assistants, shall, and
 “ they are hereby empowered and required to receive and
 “ register every such entry in a book or roll to be provided
 “ and kept for that purpose, and to deliver out a number,
 “ in writing, to such owner or owners, to be marked on
 “ one or more part or parts of such boat, in such manner
 “ as shall be directed and appointed in pursuance of this
 “ act; for the registering which entry, and delivering out
 “ such number, the sum of five shillings shall be paid, and
 “ no more; and the said master, wardens, and assistants,
 “ are hereby authorised and impowered to take and receive
 “ the same, and, from time to time, to make such orders,
 “ rules, and regulations, as they shall think requisite and
 “ proper, for the ascertaining the part or parts of such boat,
 “ on which the said number, and the names and place or
 “ places of abode of the owner or owners thereof shall be
 “ marked, and in what manner, and of what dimensions
 “ the figure or figures, and letters, composing such num-
 “ ber, and names and place or places of abode, shall be made,
 “ and how the same shall be, from time to time, renewed,
 “ and kept fair and legible; and that all such orders, rules,
 “ and regulations, after one publication thereof in the
 “ *London Gazette*, and printed copies of the same being af-
 “ fixed at *Iron Gate*, the *Hermitege*, *Execution Dock*, *Shad-*
 “ *well Dock*, *Rotherhithe Old Stairs*, *Deptford*, *Ratcliff Cross*,
 “ and *Blackwall*, shall be observed by and binding upon
 “ every owner or owners of such boats so entered as afore-
 “ said.”

† *Sec. 26.* By 2. Geo. 3. c. 28. s. 5. it is enacted, The Company, or persons deputed by them, may stop and search bomb-boats.
 “ That it shall and may be lawful for the said master, war-
 “ dens, and assistants, or such person or persons as they
 “ shall from time to time depute and appoint under the
 “ seal of their corporation, and for all owners or masters of
 “ ships or vessels, either in whole or in part, in the said
 “ river respectively, or for such person and persons as the
 “ said owners and masters, or any seven or more of them,
 “ by

“ by writing under their hands and seals, shall, for that
 “ purpose, nominate, depute and appoint (and which it
 “ shall be lawful for them, from time to time, to do) at
 “ any time or times, to stop, search, and detain, in some
 “ place of safety, any boat which there shall be reason to
 “ suspect has any ropes, cordage, tackle, apparel, furniture,
 “ stores, materials, or any part of any cargo or lading,
 “ stolen or unlawfully procured from or out of any ship or
 “ vessel in the said river; and also to apprehend and detain,
 “ or cause to be apprehended and detained, any person or
 “ persons who may be reasonably suspected of having or
 “ conveying any such goods, stores, or things in such
 “ boat; and such person or persons so apprehended shall
 “ be (as soon as conveniently may be) conveyed before one
 “ or more justice or justices of the peace, for any county,
 “ city, division, liberty, or place, adjoining to the said
 “ river: and if such person or persons shall not produce
 “ the party or parties from whom he, she, or they bought
 “ or received such merchandizes, goods, stores, or things
 “ aforesaid, or some credible person to depose, upon oath,
 “ the sale or delivery thereof, or shall not give an account
 “ to the satisfaction of such justice or justices, how he,
 “ she, or they came by the same; that then the said person
 “ or persons so apprehended shall be deemed and adjudged
 “ guilty of a misdemeanor; and such boat, with her tackle,
 “ apparel, furniture, and loading, shall, upon such con-
 “ viction, be forfeited and disposed of as is herein-after
 “ directed.”

Constables
 and watchmen
 may seize
 stores suspect-
 ed to be stolen
 from ships by
 means of
 bumb-boats;

+ *Stat. 27.* By 2. Geo. 3. c. 28. s. 6. it is further enacted,
 “ That every constable, headborough, and beadle, and
 “ every watchman (during such time as he shall be on
 “ duty) of every parish and place where he shall be an of-
 “ ficer, shall and may apprehend and detain, or cause to
 “ be apprehended and detained, all and every person and
 “ persons who may reasonably be suspected of having or
 “ carrying, or any ways conveying, any ropes, cordage,
 “ tackle, apparel, furniture, stores, materials or any part
 “ of any cargo or lading, stolen or unlawfully procured
 “ from or out of any ship or vessel in the said river *Thames*,
 “ and also shall and may seize and detain in some place of
 “ safety such merchandizes, goods, stores, and things
 “ aforesaid, and shall, as soon as conveniently may be,
 “ convey, or cause the person or persons so apprehended
 “ to be conveyed, before any one or more justice or jus-
 “ tices of the peace for any county, city, division, liberty,
 “ or place adjoining to the said river; and if such person
 “ or persons shall not produce the party or parties from
 “ whom he, she, or they bought or received the same, or
 “ some

“ some credible person to depose upon oath the sale or delivery thereof, or shall not give an account, to the satisfaction of such justice or justices, how he, she, or they came by the same, that then the said person and persons so apprehended shall be deemed and adjudged guilty of a misdemeanor.”

† Sect. 28. By 2. Geo. 3. c. 28. f. 7. it is further enacted, and justices of peace may
 “ That it shall and may be lawful for any justice of the peace, upon information made to him on oath, by any credible person or persons, that there is cause to suspect that any merchandizes, goods, stores, or things (suspected to have been stolen or unlawfully come by, or taken from some ship or vessel in the said river) are concealed in any dwelling-house, warehouse, out-house, yard, garden, or other place, by warrant under his hand and seal, to cause every such dwelling-house, warehouse, out-house, yard, garden, and place to be searched in the day-time; and if any such merchandizes, goods, stores, or things shall be found therein, to cause the same to be deposited and kept in some place of safety; and also to cause the person or persons in whose house, warehouse, out-house, yard, garden, or other place the same shall be found, to be brought before him, or any other justice or justices of the peace for the same county, city, division, liberty, or place; and if such person or persons shall not give an account to the satisfaction of such justice or justices how he, she, or they came by the same, or shall not within some reasonable and convenient time, to be set by such justice or justices, produce the party or parties of or from whom he, she, or they bought or received the same merchandizes, goods, stores, or things, that then the person or persons in whose house, warehouse, out-house, yard, garden, or other place the same shall be found, shall be deemed and adjudged guilty of a misdemeanor.”

† Sect. 29. By 2. Geo. 3. c. 28. f. 8. it is enacted, The goods
 “ That upon any person or persons being convicted of either of the said last mentioned-misdemeanors, it shall and may be lawful for such justice or justices, before whom such person or persons was or were convicted, to cause such merchandizes, goods, stores, or things to be deposited in the custody of the churchwardens or overseers of the poor of the place where they shall have been so first deposited as aforesaid (who are hereby required to receive the same), or in any other convenient place, for any time not exceeding thirty days; and to order such churchwardens or overseers of the poor, or one of them, if the same shall happen to be in any of the parishes or places
 “ shall be deposited with the parish-officers on the offender being convicted of either of the misdemeanors.”

“ places within the bills of mortality, to insert immediately
 “ an advertisement in some public newspaper; and if the
 “ same shall happen to be in any other parish or place, to
 “ cause notice to be immediately given by some public
 “ cryer, and by affixing on the church or chapel door a no-
 “ tice in writing, describing such merchandizes, goods,
 “ stores, or things, and where the same shall have been so
 “ deposited, to the end that persons having lost any such,
 “ or any reputable person on their behalf, may come and
 “ claim the same, within thirty days from the time of giv-
 “ ing and affixing such notice as aforesaid; and in case
 “ any person or persons do or shall, within the space of
 “ such thirty days, prove his, her, or their property in
 “ and to the said merchandizes, goods, stores, or things,
 “ upon oath to the satisfaction of one or more justice or
 “ justices as aforesaid, that then such justice or justices
 “ shall order restitution of such merchandizes, goods,
 “ stores, or things to be made to the owner or owners
 “ thereof, after paying the reasonable charges of seizing,
 “ removing, depositing, and giving public notice as afore-
 “ said, and also reasonable compensations to the person or
 “ persons giving such information as aforesaid; such
 “ charges and compensations to be settled and ascertained
 “ by such justice or justices: but if at the end of the said
 “ thirty days (notice having been given as aforesaid) no
 “ such proof shall be made as aforesaid, the said merchan-
 “ dizes, goods, stores, or things shall be sold by the church-
 “ wardens or overseers, in whose custody the same
 “ shall have been deposited as aforesaid, for the best price
 “ that can reasonably be had; and, after deducting the
 “ charges so settled as aforesaid, the remainder of the money
 “ arising from such sale shall be given, one moiety thereof
 “ to the person or persons so apprehending or giving infor-
 “ mation as aforesaid (as the case shall be) of the party or
 “ parties guilty of the misdemeanors as aforesaid, or either
 “ of them, and the other moiety to the poor of the parish
 “ or place where such merchandizes, goods, stores, or
 “ things shall have been so first deposited as aforesaid.”

Pawnbrokers
 may stop
 stores suspect-
 ed to have
 been stolen.

† *Stat. 30.* By 2. Geo. 3. c. 28. s. 9. it is further enacted,
 “ That every person to whom any goods, stores, or things
 “ belonging to ships or vessels shall be brought and offered
 “ to be sold, pawned, or delivered, shall, and he or she is
 “ hereby impowered and required (there being reasonable
 “ cause to suspect that such merchandizes, goods, stores, or
 “ things were stolen, or unlawfully come by, from or out
 “ of any ship or vessel in the said river) to apprehend, se-
 “ cure, and carry before a justice of the peace for the coun-
 “ ty, city, division, liberty, or place where the same shall
 “ be

“ be so brought or offered, the person or persons so bringing or offering the same, and in the mean time to secure such merchandizes, goods, stores or things, and such person or persons so apprehended shall be dealt with, and such merchandizes, goods, stores, or things shall be deposited and disposed of, in the same manner as if he, she, or they had been apprehended by the constable, headborough, beadle, or watchman as aforesaid.”

† *Stat.* 31. By 2. Geo. 3. c. 28. s. 10. it is further enacted, Persons guilty of the misdemeanor shall forfeit, &c.
 “ That every person deemed and adjudged guilty of any of the misdemeanors aforesaid shall, for every such misdemeanor, forfeit, for the first offence the sum of forty shillings; for the second offence the sum of four pounds; and for every subsequent offence the sum of four pounds; all which said respective forfeitures shall and may be levied by distress and sale of the goods and chattels of every such offender (rendering to him, her, or them the overplus, after charges of the said distress and sale deducted), by warrant under the hand and seal, or hands and seals, of any one or more of such justice or justices before whom such offender was convicted; which forfeiture shall be paid, one moiety thereof to the person apprehending such offender or offenders, or giving information, as the case shall be, and the other moiety thereof to the said master, wardens, and assistants of the said corporation, to be distributed among the poor decayed seamen, and their widows, under the care of the said corporation; and if the said respective forfeitures shall not be paid, nor sufficient distress shall be found whereon to levy the same, then the said justice or justices shall and may commit every such offender so convicted as aforesaid to the common gaol, or other prison or house of correction within his or their jurisdiction, without bail or mainprize, for the space of one month for the first offence, and for the second offence for the space of two months, and for every subsequent offence until such offender shall be discharged by order of the court of general or quarter sessions.”

† *Stat.* 32. By 2. Geo. 3. c. 28. s. 11. it is further enacted, Convictions of such misdemeanors to be certified to the quarter-sessions.
 “ That every conviction of any offender in any of the said misdemeanors shall be certified by the justice or justices of the peace making the same, to the next general or quarter sessions of the peace, to be filed and entered among the records of the said session; which said conviction shall be good and effectual in law, to all intents and purposes, and shall not be quashed, set aside, or be adjudged void or insufficient for want of any other form or words whatsoever; nor be liable to be removed
 “ by

“ by *certiorari* into his majesty's court of king's bench, but
 “ shall be deemed and taken to be final, to all intents and
 “ purposes whatsoever.”

Persons buy-
 ing or receiv-
 ing goods
 stolen from
 vessels in the
 river *Thames*,
 shall be trans-
 ported for
 fourteen
 years.

† *Seet. 33.* By 2. Geo. 3. c. 28. s. 12. it is further enacted,
 “ That every person who shall buy or receive any part of
 “ the cargo or loading of, or any goods, stores, or things,
 “ of or belonging to any ship or vessel in the said river,
 “ knowing the same to be stolen or unlawfully come by;
 “ or shall privately buy or receive any such goods, stores,
 “ or things, or any part of such cargo or loading, by suf-
 “ fering any door, window, or shutter to be left open or
 “ unfastened between sun-setting and sun-rising for that
 “ purpose, or shall buy or receive the same, or any of them,
 “ at any time, in any clandestine manner, from any person
 “ or persons whomsoever, shall, being thereof convicted
 “ by due course of law (although the principal felon or
 “ felons, offender or offenders, has or have not been con-
 “ victed of stealing or unlawfully procuring the same), be
 “ transported for fourteen years to any of his majesty's co-
 “ lonies or plantations in *America*, according to the laws
 “ in force for the transportation of felons.”

Persons cut-
 ting any ca-
 bles or other
 fasts of ships
 in the River,
 shall be trans-
 ported for se-
 ven years.

† *Seet. 34.* By 2. Geo. 3. c. 28. s. 13. it is further enacted,
 “ That if any person or persons shall cut, damage or spoil
 “ any cordage, cable, buoys, buoy rope, headstap, or other
 “ fast, fixed to any anchor or moorings belonging to any
 “ ship or vessel at anchor or mooring in the river *Thames*,
 “ or any rope used for the purpose of mooring or raising
 “ masts or timber, or shall be aiding or assisting therein,
 “ with an intent to steal the same; such person or persons
 “ shall, being convicted thereof on the oath of two or more
 “ credible witnesses, be transported to some of his majes-
 “ ty's plantations in *America* for the space of seven years,
 “ according to the laws now in force for the transporta-
 “ tion of felons.”

Offenders dis-
 covering two
 accomplices,
 intitled to
 pardon.

† *Seet. 35.* By 2. Geo. 3. c. 28. s. 14. it is further enacted,
 “ That if any person, being out of prison, shall, by steal-
 “ ing, or unlawfully receiving, any part of any cargo or
 “ lading, of, or any goods, stores, or things belonging to,
 “ or out of, or from any ship or vessel in the said river,
 “ and shall afterwards discover two or more persons who
 “ shall have bought or received any stolen or unlawfully
 “ procured goods, stores, or things, or any part of any
 “ cargo or lading of, or belonging to, or by, from or out
 “ of any ship or vessel in the said river, knowing the same
 “ to be stolen, or unlawfully procured, so as two or more
 “ of the persons discovered shall be convicted of such buy-
 “ ing

“ ing or receiving ; every person so discovering shall have
 “ and be intitled to the gracious pardon of his majesty, his
 “ heirs and successors, for all such felonies by him or her
 “ committed at any time or times before such discovery
 “ made ; which pardon shall be likewise a bar to any appeal
 “ brought for any such felony.”

† Sect. 36. By 2. Geo. 3. c. 28. s. 15. it is enacted, Persons navi-
gating bumb-
boats, not en-
tered at the
Trinity-
House, shall
be liable to a
penalty of forty
shillings.
 “ That if after the publication of any such orders, rules,
 “ and regulations by the said master, wardens, and assistants,
 “ any person or persons shall row or navigate, within the
 “ limits aforesaid, any such boat as is herein-before directed
 “ to be entered, marked, and numbered, not being so en-
 “ tered, marked, and numbered as aforesaid ; or having a false
 “ mark or number, or not having the real name or names,
 “ and places of abode, of the owner or owners of such
 “ boat inscribed thereon, or not having such names and
 “ figures kept fair and legible, in such manner as shall
 “ have been directed and required, from time to time,
 “ by such orders, rules, and regulations ; in each of the
 “ cases aforesaid, every such person, being thereof convicted
 “ before one or more justice or justices of the peace of any
 “ county, city, division, liberty, or place, near or adjoining
 “ to the said river, upon his or her own confession, or
 “ the oath of one or more credible person or persons, shall,
 “ for every such offence, forfeit and pay the sum of forty
 “ shillings ; one moiety whereof to be paid to the person
 “ or persons who shall give information of, and prosecute
 “ to conviction, such offender or offenders as aforesaid,
 “ and the other moiety to the said master, wardens, and as-
 “ sistants of the said corporation, to be applied by them as
 “ aforesaid : and it shall and may be lawful for any person
 “ or persons, upon discovery of any such offence or of-
 “ fences, to seize and detain any such boat, with all her
 “ tackle, apparel, and furniture thereunto belonging ; and
 “ shall thereupon, within the space of forty-eight hours
 “ after such seizure made, give information thereof, and
 “ of the nature of the offence, to any one or more justice
 “ or justices of the peace as aforesaid, who shall proceed
 “ to hear, and shall determine, as soon as conveniently
 “ may be, upon such information ; and if such forfeiture
 “ shall not be paid within the space of twenty-four hours
 “ after conviction, then the same shall be raised by sale of
 “ the said boat, and her tackle and appurtenances ; and
 “ every justice of the peace, within his jurisdiction, is
 “ hereby authorized and required to issue his warrant under
 “ his hand and seal, directed to the constable, or some other
 “ peace-officer of the parish or place in which such boat
 “ so seized as aforesaid shall be detained, to cause sale to
 “ be

“ be made thereof, and all her tackle and appurtenances,
 “ with all convenient speed, for raising the money for-
 “ feited for the said offence as aforesaid, rendering to the
 “ offender or offenders the overplus (if any there shall be)
 “ after deducting the charges of detaining and selling such
 “ boat.”

The master
 and wardens
 of the *Trinity-*
house may
 hear com-
 plaints.

† *Sect.* 37. By 2. Geo. 3. c. 28. f. 16. it is further enacted,
 “ That the said master, wardens, and assistants shall and
 “ may, and they are hereby authorised and required, on
 “ any complaint to be made to them by any credible per-
 “ son or persons, of any thefts, robberies, frauds, or other
 “ illegal practices being carried on, or reasonably suspected
 “ to be carried on, in any boat so to be numbered and
 “ marked as aforesaid, to summon the owner or owners
 “ thereof to appear before them, or any five or more of
 “ them, at the *Trinity-house* in *Water-lane*, or other usual
 “ place of meeting appointed, or to be appointed, at such
 “ time as they shall appoint; at which time and place the
 “ said master, wardens, and assistants, or any five or more
 “ of them, shall inquire into the said complaint in a sum-
 “ mary way; and in case the said complaint shall be proved
 “ to their satisfaction, and they shall so think fit, they the
 “ said master, wardens, and assistants, or any five or more
 “ of them, being a majority of the members then present,
 “ may thereupon take away and totally abolish the said
 “ number so given to the said boat as aforesaid; and also
 “ may, for the future, refuse to enter, as before directed,
 “ any boat of or belonging to such owner or owners;
 “ any thing herein-before contained to the contrary not-
 “ withstanding.”

In what cases
 bumb-boats
 may be or-
 dered to be
 burned.

† *Sect.* 38. By 2. Geo. 3. c. 28. f. 17. it is enacted,
 “ That where any person or persons shall be convicted of
 “ any offence against this act, by which is incurred the
 “ forfeiture of any boat, with her tackle and appurtenances,
 “ and concerning which, after such conviction, no provi-
 “ sion is hereby made, it shall and may be lawful to and
 “ for such justice or justices of the peace, before whom
 “ such conviction shall be had, or any other justice or jus-
 “ tices of the peace of and for any county, city, division,
 “ liberty, or place adjoining to the said river *Thames*, on
 “ conviction had, and they are hereby respectively autho-
 “ rised and required to cause such boat, with her tackle and
 “ appurtenances, to be totally burnt and destroyed, within
 “ six days next after such conviction as aforesaid, by war-
 “ rant under the hand and seal or hands and seals of such
 “ justice or justices, directed to the constable or other peace-
 “ officer of the parish or place adjoining to the said river,
 “ or

“ or where such conviction shall be had ; which said constable, or other peace-officer shall thereupon cause such boat, tackle, and appurtenances to be so burnt and destroyed, within the time aforesaid.”

† *Sec. 39.* By 2. Geo. 3. c. 28. s. 18. it is enacted, Any person
 “ That it shall and may be lawful for any person or persons, by the authority of this act, and without any other warrant, to apprehend any offender or offenders committing any of the offences herein-before mentioned, and intended by this act to be redressed, and with all convenient speed to convey or deliver every such offender or offenders to a constable, or some other peace-officer of the county, city, division, liberty, or place in or near to which the offence shall be committed, or the offender or offenders shall be apprehended, in order to be conveyed before some justice of the peace for such county, city, liberty, or place, there to be dealt with according to law.” may apprehend the offender.

† *Sec. 40.* By 2. Geo. 3. c. 28. s. 19. it is enacted, Persons obstructing the
 “ That in case any person or persons acting in the execution of any of the powers granted by this act, shall be obstructed therein, every person so obstructing, and all such as shall act in their assistance, shall, on being there- of convicted before the justices of the peace, at the general or quarter session of the county or city adjoining to the said river, upon the oath of two or more credible persons, be transported to any of his majesty’s plantations in *America*, for the space of seven years, according to the law or laws now in force for the transportation of felons.” execution of the act guilty of FELONY.

† *Sec. 41.* By 2. Geo. 3. c. 28. s. 20. it is further enacted, What persons
 “ That in all actions, suits, trials, and other proceedings, which shall or may be had in pursuance of this act, or in relation to any matter or thing herein contained, any member of the said corporation, or any inhabitant of the parish, town, or place in which any offence shall be committed, contrary to the true intent and meaning of this act, or wherein any conviction shall be made pursuant hereto, shall be admitted to give evidence, and shall be deemed a competent witness, notwithstanding his being such member of the said corporation, or his or her being such inhabitant as aforesaid.” may be witnesses against offenders.

Justices shall
administer
oaths *gratis*.

† *Seet.* 42. By 2. Geo. 3. c. 28. s. 21. it is also enacted,
“ That in all cases where an oath is by this act directed
“ to be taken by any person or persons, it shall and
“ may be lawful for any one or more justice or justices
“ of the peace within the county, city, division, li-
“ berty, or place, where the matter to be sworn to
“ shall arise, and he and they is and are respectively
“ hereby authorised and required to administer the same
“ without fee or reward.”

The time
within which
prosecutions
must take
place.

† *Seet.* 43. By 2. Geo. 3. c. 28. s. 22. it is further enacted,
“ That if any action or suit shall be commenced or
“ brought against any justice or justices of the peace, or
“ the said master, wardens, and assistants, or any of them,
“ or other officer or person whatsoever, acting in the ex-
“ ecution of any of the powers in them hereby vested,
“ for doing, or causing to be done, any thing in pur-
“ suance of this act, concerning any of the said offences,
“ the same shall be laid in the county of *Middlesex*, or
“ city of *London*, and not elsewhere; and shall be com-
“ menced within six months next after such cause of
“ action accrued; and the defendant or defendants there-
“ in may plead the general issue, and give this act and
“ the special matter, in evidence, at any trial to be had
“ thereupon, and that the same was done in pursuance
“ and by the authority of this act: and if it shall ap-
“ pear so to have been done, or that such action or
“ suit was brought after the time before limited, or in
“ any other place, that then the jury shall find for
“ the defendant or defendants; and if upon such ac-
“ tion a verdict shall be given for the defendant or de-
“ fendants; or if the plaintiff or plaintiffs shall become
“ nonsuited, or discontinue his, her, or their action
“ or suit, after the defendant or defendants shall have
“ appeared; or if, upon demurrer, judgment shall be
“ given against the plaintiff or plaintiffs, then the de-
“ fendant or defendants shall and may recover treble
“ costs, and have such remedy for the same, as any de-
“ fendant or defendants hath or have in any case by
“ law.”

This is a pub-
lic act.

† *Seet.* 44. By 2. Geo. 3. c. 28. s. 23. it is further enact-
ed, “ That this act shall be deemed, adjudged, and taken
“ to be a public act; and be judicially taken notice of as
“ such by all judges, justices, and other persons whom-
“ soever, without the same being specially pleaded.”

† *Sec. 45.* It has been determined that the words of *Rex v. Wyer*, the twelfth and fourteenth sections of the above statute make 2. Term Rep. the offence of buying or receiving any part of a ship's⁷⁷ cargo, knowing the same to have been stolen, *a felony*; and therefore the court of king's bench will not bail a person committed for such felony.

CHAPTER THE FORTY-SEVENTH,

CONTINUED.

RESCUING THE BODY

OF AN

EXECUTED MURDERER.

Penalty of res- † *Secl.* 1. BY 25. Geo. 2. c. 37. f. 9. it is enacted,
cuing a mur- “ That if any person or persons whatsoever
derer. “ shall by force set at liberty, or rescue, or attempt to rescue
“ or set at liberty, any person out of prison who shall be
“ committed for, or found guilty of murder, or rescue,
“ or attempt to rescue, any person convicted of murder
“ going to execution, or during execution, every person
“ so offending shall be deemed, taken, and adjudged to be
“ guilty of felony, and shall suffer death without benefit
“ of clergy.”

Penalty of res- † *Secl.* 2. By 25. Geo. 2. c. 37. f. 10. it is further enacted,
cuing the body “ That if any person or persons whatsoever shall, after such
after execu- “ execution had, by force rescue, or attempt to rescue, the
tion. “ body of such offender out of the custody of the sheriff or
“ his officers, during the conveyance of such body to any
“ of the places hereby directed, or shall by force rescue,
“ or attempt to rescue, such body from the Company of
“ Surgeons, or their officers or servants, or from the house
“ of any surgeon where the same shall have been depo-
“ sited in pursuance of this act; every person so offending
“ shall be deemed and adjudged to be guilty of felony, and
“ shall be liable to be transported to some of his majesty’s
“ colonies or plantations in *America* for the term of seven
“ years, in like manner as is directed by the laws now in
“ force relating to the transportation of felons; and shall
“ be subject to the like punishment and methods of con-
“ viction, in case of returning into, or being found at
“ large within *Great Britain*, within the said term of seven
“ years, in all respects, as by law other felons are subject
“ to, in case of unlawfully returning from transporta-
“ tion.”

CHAPTER THE FORTY-SEVENTH

CONTINUED.

O F

INCORRIGIBLE ROGUES.

† *Sect. 1.* **BY** 17. Geo. 2. c. 5. f. 9. it is enacted, “ That (a) *See vol. ii.*
 “ in case any *incorrigible rogue (a)* ordered by *page*
 “ the general or quarter sessions to be detained and kept in
 “ the house of correction, shall, before the expiration of the
 “ time for which he or she shall be so ordered to be there
 “ detained and kept, break out or make his or her escape
 “ from the said house of correction, or shall offend again in
 “ the like manner; in every such case, every such person
 “ shall be deemed and taken to be guilty of felony, and,
 “ being legally convicted thereof, shall and may be trans-
 “ ported for any time not exceeding seven years, in the
 “ same manner as by the laws now in being other felons
 “ may be transported.”

† *Sect. 2.* It has been determined, that a person com- *Ballie's Case,*
 mitted as a *rogue and vagabond* under the statute 23. Geo. 3. *O. B. Sept.*
 c. 88. who breaks gaol, and on being committed as an *in-* *Sess. 1785, on*
corrigible rogue under 17. Geo. 2. c. 5. breaks gaol a second *a case reserved*
 time, and commits a new act of vagrancy as a *rogue and va-* *for the opi-*
gabond, may be indicted for felony and transported under *judges.*
 the above statute. *Cases C. L.*
308.

CHAPTER THE FORTY-SEVENTH

CONTINUED.

PERSONS CONVICTED OF PERJURY ESCAPING,

Penalty for
perjury and
subornation.

† *Secl. 1.* BY 2. Geo. 2. c. 25. s. 2. the more effectually to deter persons from committing wilful and corrupt perjury, or subornation of perjury, it is enacted, "That besides the punishment already to be inflicted by law for so great crimes, it shall and may be lawful for the court or judge, before whom any person shall be convicted of wilful and corrupt perjury, or subornation of perjury, according to the laws now in being, to order such person to be sent to some house of correction within the same county, for a time not exceeding seven years, there to be kept to hard labour during all the said time, or otherwise to be transported to some of his majesty's plantations beyond the seas, for a term not exceeding seven years, as the Court shall think most proper; and thereupon judgment shall be given, that the person convicted shall be committed or transported accordingly, over and beside such punishment as shall be adjudged to be inflicted on such person, agreeable to the laws now in being; and if transportation be directed, the same shall be executed in such manner as is or shall be provided by law for the transportation of felons; and if any person so committed or transported shall voluntarily escape or break prison, or return from transportation before the expiration of the time for which he shall be ordered to be transported as aforesaid, such person, being thereof lawfully convicted, shall suffer death as a felon, without benefit of clergy, and shall be tried for such felony in the county where he so escaped, or where he shall be apprehended."

Persons convicted of forgery, &c. practising as attorneys, &c. offending against this act, to be transported.

† *Secl. 2.* By 12. Geo. 1. c. 29. s. 4. for avoiding the great mischiefs and abuses which arise from infamous and wicked persons already convicted of wilful perjury or forgery, practising as attorneys or solicitors, in courts of law and equity, it is enacted, "That if any person who hath been or who shall be convicted of forgery, or of wilful and corrupt perjury, or subornation of perjury, or com-
" mon

“ mon barratry, shall act or practise as an attorney, or solicitor or agent, in any suit or action brought or to be brought in any court of law or equity, within that part of *Great Britain* called *England*, the judge or judges of the court, where such suit or action is or shall be brought, shall, upon complaint or information thereof, examine the matter in a summary way in open court; and if it shall appear to the satisfaction of such judge or judges, that the person complained of, or against whom such information shall be given, hath offended contrary to this act, such judge or judges shall cause such offender to be transported for seven years to some or one of his majesty's colonies or plantations in *America*, by such ways, means, and methods, and in such manner, and under such pains and penalties, as felons in other cases are by law to be transported.”

CHAPTER THE FORTY-EIGHTH.

OF

O W L I N G.

OFFENCES against the public revenue made penal by statute, are

1. Owling.
2. Smuggling.
3. Granting fraudulent permits,
4. Transposing stamps.

AS TO THE FIRST POINT, *viz.* The offence of owling.

† *Sec. 1.* OWLING, so called from its being usually carried on in the night, is the clandestine transportation of wool or sheep out of the kingdom, to the detriment of its staple manufacture.

† *Sec. 2.* By 9. and 10. Will. 3. c. 40. f. 3. IT IS RE- Owners of
CITED, "That it is a common practice in *Romney Marsh* wool within
and other places adjacent, for evil-disposed persons to shear ten miles of
their sheep, and lodge wool near the sea-side, and sometimes the sea-side,
to bring wool out of the country more remote, and lodge it in *Kent* or
Sussex, to give
as aforesaid, where by fraud and force in the night-time, the an account of
said persons do cause the same to be transported to *France*, the number
to the increase of the trade of that kingdom, and the de- of fleeces, &c.
struction of the trade of *England*:" AND ENACTED, "That
"all and every owner and owners of wool shorn or housed,
"laid up or lodged, within ten miles of the sea-side, within
"the counties of *Kent* and *Sussex*, shall be obliged to give
"an exact account in writing, within three days after the
"sheering thereof, of his, her, or their number of fleeces,
"and where lodged or housed, to the next adjacent port or
"officer of his majesty's customs, and the like notice be-
"fore he, she, or they shall presume to remove any part or
"parcel thereof of the said number of fleeces and weight,
"and

Penalty,

Officer to give
certificate, &c.

“ and the name and abode of the person or persons to whom
 “ it is disposed, and the place to which it is intended to be
 “ carried; and to take a certificate from the officer who
 “ first entered the same, upon the penalty of forfeiting all
 “ such wool as shall not be so entered or otherwise disposed
 “ of, and the owner or owners also to be liable to the fur-
 “ ther penalties of three shillings for every pound weight of
 “ all such wool, as if the same had been actually transported;
 “ which said account the officers respectively are hereby
 “ required to take *gratis*, and to give such certificate or cer-
 “ tificates, without delay, to the party or parties demanding
 “ the same, and shall therein specify the name or names of
 “ the owners and buyers thereof, and limit it to such times
 “ and places to be removed; for which duty and service
 “ the said officer or officers shall take and demand the sum
 “ of sixpence, and no more, for each certificate, upon any
 “ account or pretence whatsoever.”

No person
shall sell wool
within 15
miles of the
sea-side, in
Kent or *Sus-*
sex, unless
entered, &c.

† *Stat. 3.* By 9. and 10. Will. 3. c. 40. f. 4. IT IS RE-
 CITED, “ That it is a common practice in the said marsh
 for divers persons, not resident upon the place, to buy up
 great quantities of wool, and transport, or cause the same
 to be transported out of this kingdom:” AND ENACTED,
 “ That no person or persons residing within fifteen miles
 “ of the sea, in the counties of *Kent* and *Sussex*, shall pre-
 “ sume to buy any wool, before they do enter into bond to
 “ the king’s majesty, his heirs, or successors, with sureties,
 “ that all the wool they buy shall not be sold by them to
 “ any person or persons within fifteen miles of the sea;
 “ and in case any wool be found carried towards the sea-
 “ side in the counties aforesaid, unless such wool be first
 “ entered, and security given, the same shall be forfeited,
 “ and the person or persons offending therein shall also
 “ forfeit three shillings for every pound weight of all such
 “ wool.”

Nor remove it
from the place
where it was
first housed.

† *Stat. 4.* By 9. and 10. Will. 3. c. 40. f. 5. it is further
 enacted, “ That no wool removed from the place where it
 “ was first housed, lodged, or laid, after sheering, within ten
 “ miles as aforesaid, shall be lodged after the first removing,
 “ within fifteen miles of the sea, in the counties aforesaid,
 “ upon pain of forfeiting all such wool, if found; but if
 “ carried away, then every person or persons, who were the
 “ owners of the said wool, to forfeit for every pound weight
 “ the sum of three shillings.”

Wool laid
within 15
miles of the
sea, forfeited,
&c.

† *Stat. 5.* By 9. and 10. Will. 3. c. 40. f. 6. it is further
 enacted, “ That all and every person or persons that shall
 “ lay, or cause to be laid or hid, any wool within fifteen
 “ miles

“ miles of the sea, and not entered as aforesaid, all such
 “ wool shall be seized and forfeited; and upon any seizure
 “ of such wool, every person laying claim to the same, shall
 “ give sufficient security in his majesty's court of exchequer
 “ (if cast upon trial), to pay treble costs, over and above
 “ the penalties and forfeitures aforesaid.”

† *Seft.* 6. By 28. Geo. 3. c. 38. s. 2. which repeals all former acts upon this subject, except that above cited, it is enacted, “ That if any person or persons whosoever shall
 “ bring, deliver, send, receive, or take, or cause or procure
 “ to be brought, delivered, sent, received, or taken into any
 “ ship, vessel, or boat, any rams, sheep, or lambs, of any
 “ sort or description whatsoever, of the breed of the king-
 “ dom of *Great Britain*, or of the isles of *Jersey*, *Guernsey*,
 “ *Alderney*, *Sark*, or *Man*, being alive, to be carried and con-
 “ veyed out of the said kingdom of *Great Britain*, or any of
 “ the said isles, the said rams, sheep, or lambs, and also the
 “ ship, vessel, or boat, on board of which the same shall be
 “ taken or received, shall become forfeited, and liable to be
 “ seized and secured for the benefit of any person or persons
 “ seizing the same; and every such person and persons so
 “ offending, his, her, and their aiders, abettors, procurers,
 “ and comforters, knowing thereof, and who shall be thereof
 “ convicted, shall, for every sheep or lamb which shall be
 “ brought, delivered, sent, received, or taken, with any
 “ such intent as aforesaid, into any ship, vessel, or boat,
 “ forfeit the sum of three pounds of lawful money of
 “ *Great Britain*, and shall also suffer solitary imprisonment
 “ in the common gaol or house of correction of the
 “ county, riding, division, shire, or stewartry, wherein
 “ such offender or offenders shall be respectively convicted,
 “ for the space of three calendar months, without bail
 “ or mainprize, and until such forfeiture shall be paid, so
 “ as the whole of such imprisonment for the non-payment
 “ of such forfeiture shall not exceed the space of twelve
 “ calendar months; and in case of any further convic-
 “ tion for or upon a second or other subsequent offence of
 “ the same kind, the person or persons to again offending
 “ shall, upon every second or other subsequent conviction,
 “ forfeit and pay for every such sheep or lamb the sum of
 “ five pounds of lawful money of *Great Britain*, and shall
 “ also suffer solitary imprisonment in the common or
 “ house of correction of the county, riding, division,
 “ shire, or stewartry wherein such offender or offenders
 “ shall be respectively convicted, for the space of six ca-
 “ lendar months, without bail or mainprize, and until
 “ such forfeitures shall be paid, so as the whole of the
 “ imprisonment for the non-payment of the forfeiture in-
 “ curred

If live sheep,
 &c. be con-
 veyed out of
Great Britain
 or *Jersey*, &c.
 they and the
 vessel are for-
 feited,

and the per-
 sons assisting
 therein to pay
 3*l.* for each
 sheep, and
 suffer three
 months im-
 prisonment;

and for a sub-
 sequent of-
 fence, 5*l.* for
 each sheep,
 and to suffer
 six months im-
 prisonment.

Forfeitures to be to the persons suing for the same.
Not to extend to live sheep carried for diet of crew.

“ curred by such second or other subsequent offence shall not exceed the space of two years; all of which said several forfeitures shall be for the benefit of the person or persons who shall sue for the same: Provided always, That nothing in this act contained shall in anywise extend to subject any person or persons, or any ship, vessel, or boat, to any of the pains, penalties, or forfeitures, herein contained, for the carrying or conveying away of any wether sheep, or of the wool growing upon any such wether sheep, to be carried alive in any ship, vessel, or boat, out of the kingdom of *Great Britain*, or out of any of the said isles, for and towards the only necessary food and diet of or for the master or commander, mariners, passengers, or persons therein, and for and towards no other purpose whatsoever.”

No live wether sheep to be shipped for diet without licence from the port officer of the customs.

† *Sec. 7.* By 28. Geo. 3. c. 38. s. 3. it is provided, “ That no live wether sheep shall be put or carried on board any ship, vessel, or boat, for the necessary food or diet of the master or commander, mariners, or passengers therein, until an application shall have been made to the comptroller and collector of the customs of such port or place where the same are intended to be shipped, and a licence obtained from them for the shipping thereof; which licence shall specify the number of wether sheep so to be put on board such ship or vessel, and they shall in no case exceed such number as in the judgment of the officers granting such licence shall be deemed sufficient for the use of such master or commander, mariners, or passengers, during the intended voyage of such ship or vessel, according to the distance thereof; nor shall the same be shipped but in the presence of the proper officers appointed to attend the same, upon pain that the sheep so put on board shall become forfeited to the person or persons seizing the same; and the person or persons shipping or attempting to ship the same, shall, for every such offence, forfeit and pay the sum of twenty shillings for every such sheep, to the person or persons who shall inform thereof.”

Licence to specify the number of sheep, which must be shipped in the presence of the officer, on penalty of forfeiture, and 20s. for each sheep.

Where there is no officer, the licence to be granted by the officers at the nearest place, &c.

† *Sec. 8.* By 28. Geo. 3. c. 38. s. 4. it is further provided, “ That if it shall happen that there shall be no comptroller or collector of the customs at the place where the said live wether sheep are intended to be shipped, that then and in every such case such licence shall be obtained from, and the shipping of such live wether sheep shall be made in the presence of, some one or more officer or officers of his majesty’s revenue nearest to such place, and every such officer is hereby required to grant such licence, and

“ to

“ to attend to and overlook the shipping of such sheep;
 “ any thing herein contained to the contrary thereof in
 “ anywise notwithstanding.”

† *Señ. 9.* By 28. Geo. 3. c. 38. f. 5. IT IS RECITED, Not to extend
 “ That there are, within some parts of that part of *Great* to vessels
Britain called *Scotland*, very few officers of his majesty's bound to or
 revenue:” AND ENACTED, “ That nothing in this act from any place
 “ contained with respect to any officer being present at the between the
 “ shipping of live wether sheep, or the granting a licence *Mull of Cantire*
 “ for that purpose, shall extend or be construed to extend, and *Cape*
 “ to the shipping of live wether sheep on board any ship, *Wrath*;
 “ vessel, or boat which shall be bound only to or from any
 “ port or place between the *Mull of Cantire* and *Cape Wrath*,
 “ for the necessary food and diet of or for the master or
 “ commander, mariners, passengers, or persons on board
 “ such ships, vessels, or boats, and for and towards no other
 “ purpose whatsoever.”

† *Señ. 10.* By 28. Geo. 3. c. 38. f. 6. IT IS RECITED, nor to the
 “ That in that part of *Great Britain* called *Scotland*, estates moving sheep
 and farms often consist of mainland and small islands from the
 within the different firths or seas adjacent, on which mainland to
 islands sheep are fed and depastured, and which, for that islands within
 and other purposes, must necessarily be removed on board the firths of
 boats or other vessels from one island to another island, *Scotland*,
 or to the mainland, or therefrom to the said islands:” where estates
 ENACTED, “ That this act, or any thing herein contained, consist of both,
 “ shall not extend to prevent or hinder any landholder,
 “ proprietor, or tenant of such estate or estates, or farm or
 “ farms, from moving, transporting, carrying, and ex-
 “ changing from the mainland to any island or islands in
 “ the firths or seas adjacent, or from any such island to
 “ another such island, or from thence to the mainland, on
 “ board boats or other vessels, any live sheep or lambs, as
 “ occasion may be or require.”

† *Señ. 11.* By 28. Geo. 3. c. 38. f. 7. it is provided, Proprietors,
 “ That it shall not be lawful to or for any such land- Sec. of such
 “ holder, proprietor, or tenant of such aforesaid estate estates to give
 “ or estates, farm or farms, to remove, transport, carry, bond not to
 “ or exchange, any such live sheep or lambs as aforesaid, export sheep
 “ until he, she, or they shall have entered into a bond, to foreign
 “ to the use of the king's majesty, his heirs, and successors, parts, and to
 “ in the penalty of one hundred pounds, that such land- obtain a li-
 “ holder, proprietor, or tenant, will not export, or know- cence for so
 “ ingly permit to be exported, to foreign parts, any live moving them-
 “ sheep, lambs, wool, woofels, mortlings, or shortlings,
 “ to him, her, or them belonging, contrary to the true
 “ in.

“ intent and meaning hereof; and shall have delivered
 “ such bond to one of his majesty’s justices of the peace,
 “ officer of the customs, or officer of excise, nearest to the
 “ residence of such landholder, proprietor, or tenant; and
 “ also until he, she, or they shall have obtained a licence
 “ for the moving, transporting, carrying, or exchanging
 “ any such live sheep or lambs as aforesaid, from such afore-
 “ said justice of the peace, or officer, under his hand and
 “ seal; and which such aforesaid justice and officer are
 “ hereby required to grant upon receiving such bond, or at
 “ any time thereafter.”

Licence to
 contain the
 name of the
 person to
 whom grant-
 ed, &c. and to
 continue in
 force till the
 bond be for-
 feited.

Bond and
 copy of li-
 cence to be
 sent to the
 commission-
 ers of the
 customs in
 Edinburgh.

† *Stat. 12.* By 28. Geo. 3. c. 38. s. 8. it is further
 enacted, “ That every such licence shall express and contain
 “ the name and residence of the person and persons to whom
 “ the same shall be granted, and the names and situations
 “ of the islands to and from which any such live sheep or
 “ lambs shall and may be thereby moved, transported, car-
 “ ried, or exchanged; and every such licence shall continue
 “ in force until a forfeiture shall be made of the last afore-
 “ said bond; which said bond, and a copy of every such
 “ licence, shall be sent, by the justice or officer who shall
 “ take or grant the same, within one month next after the
 “ receiving of such bond or granting such licence respec-
 “ tively, to the commissioners of his majesty’s customs in
 “ *Edinburgh.*”

Persons con-
 veying wool,
 &c. out of
Great Britain
 or *Jersey*, &c.
 Owners, &c.
 of ships, carts,
 hortes, &c. or
 revenue offi-
 cers, export-
 ing, or assist-
 ing in the ex-
 portation of
 sheep, wool,
 &c. liable to
 penalties.

† *Stat. 13.* By 28. Geo. 3. c. 38. s. 9. it is further
 enacted, “ That all and every person and persons who shall
 “ directly or indirectly carry, export, transport, or other-
 “ wise convey, or cause or procure to be carried, exported,
 “ transported, or otherwise conveyed, out of the kingdom
 “ of *Great Britain*, or out of or from the said isles of *Jersey*,
 “ *Guernsey*, *Alderney*, *Sark*, and *Man*, or out of or from any
 “ of them, into any parts or places out of the kingdom or
 “ isles aforesaid, any wool whatsoever of the growth of the
 “ kingdom, or of the isles aforesaid, or any woolsels,
 “ mortlings, shortlings, yarn or worsted made of wool,
 “ woolstocks, cruels, coverlids, waddings, or other ma-
 “ nufactures, or pretended manufactures, made of wool
 “ slightly wrought up, or otherwise put together, so as the
 “ same may be reduced to and made use of as wool again,
 “ or mattresses or beds stuffed with combed wool, or wool
 “ fit for combing or carding, or any fullers earth, ful-
 “ ling clay, or tobacco-pipe clay, and also all and every
 “ owner and owners of any ship or other vessel, and all
 “ and every owner and owners of every horse or other
 “ beast of burthen, waggon, cart, or carriage, upon which
 “ any sheep, wool, or other articles before enumerated,
 “ and

“ and hereby prohibited from exportation, shall be exported,
 “ transported, carried or conveyed, packed or loaded, with
 “ an intent to be exported, knowing thereof, and being
 “ actually aiding, assisting, or consenting thereunto, and
 “ also every master and commander, and mariner of or in
 “ such ship or other vessel wherein any such wool or other
 “ articles aforesaid, and which are hereby prohibited from
 “ being exported, shall be so exported, transported, carried
 “ or conveyed, or laden or laid on board as aforesaid,
 “ with any such intent or purpose as aforesaid, knowing
 “ thereof, and being actually aiding, assisting, or consenting
 “ thereunto, and also every factor or servant, or other per-
 “ son whatsoever, and every collector, customer, comp-
 “ troller, waiter, searcher, surveyor, or other officer or
 “ officers whomsoever, knowing thereof, and being actually
 “ aiding, assisting, or consenting thereunto, and who shall
 “ be thereof convicted, shall forfeit and pay for the first
 “ offence three shillings for every pound weight of such *Penalties.*
 “ wool, or other the aforesaid enumerated articles, which
 “ are hereby prohibited from being exported, or the sum of
 “ fifty pounds of lawful money of *Great Britain* in the
 “ whole, at the election of the person or persons who shall
 “ sue for the same, and shall also suffer solitary imprison-
 “ ment in the common gaol or house of correction of the
 “ county, riding, division, shire, or stewartry wherein such
 “ offender or offenders shall be respectively convicted, for
 “ the space of three calendar months, without bail or main-
 “ prize, and until the penalty in which he, she, or they
 “ shall be convicted shall be paid, so as the whole of such
 “ imprisonment for the nonpayment of such penalty shall
 “ not exceed the space of twelve calendar months; and in
 “ case of a further conviction for or upon a second or other
 “ subsequent offence of the same kind, the person or persons
 “ so again offending shall, upon every second, or other
 “ subsequent conviction, forfeit and pay three shillings
 “ for every pound weight of such wool and other articles
 “ herein-before mentioned, and which are hereby prohi-
 “ bited from being exported, or the sum of fifty pounds
 “ of lawful money of *Great Britain*, at the election of the
 “ person or persons who shall sue for the same, and shall
 “ also suffer solitary imprisonment in the common gaol
 “ or house of correction of the county, riding, division,
 “ shire, or stewartry, wherein such offender or offenders
 “ shall be respectively convicted, for the space of six ca-
 “ lender months, without bail or mainprize, and until the
 “ penalty in which he, she, or they shall be convicted shall
 “ be paid, so as the whole of such imprisonment for the
 “ non-payment of the penalty which shall be incurred by
 “ such second or other subsequent offence, shall not ex-
 “ ceed

Forfeitures to go to the persons suing for them.

Wool, &c.

conveyed contrary to this act, with the vessel, &c. to be forfeited.

ceed the space of two years; all which said several forfeitures shall be for the benefit of the person or persons who shall sue for the same; and the said wool, and other the said herein-before enumerated articles, which shall be packed, loaded, removed, carried, conveyed, or shipped, with intent to export the same, otherwise than under and according to the restrictions and regulations, and subject to the powers and exceptions herein-after mentioned and expressed, shall, together with the ship, vessel, bottom, or boat, waggon, cart, and other carriage, horses, or other beasts, on or by which any of the said hereby prohibited articles shall happen to be so loaded, carrying or conveying, be liable to be seized, and shall become forfeited for the benefit of the person or persons who shall seize the same."

And not to extend to the exportation of tobacco-pipe clay to the *British* colonies in the *West Indies*, while allowed by 17. Geo. 3. c. 43.

† *Seet.* 14. By 28. Geo. 3. c. 38. s. 10. it is provided, "That nothing in this act contained shall extend, or be deemed or construed to extend, to prohibit the exportation of tobacco-pipe clay from any port in this kingdom to any *British* sugar colony or plantation in the *West Indies*, in any ship or vessel which may lawfully trade thither, so long as the exportation thereof shall be allowed by virtue of an act made and passed in the seventeenth year of the reign of his present majesty, intituled, *An Act for repealing the eleventh rule in the book of rates, so far as the same relates to making any allowance upon the importation of damaged currants and raisins, and for making the importer of such goods an abatement in the duties in lieu thereof; and for explaining the said rule with respect to such allowance for damage on other goods; and to permit the exportation of tobacco-pipe clay from this kingdom to the British sugar colonies or plantations in the West Indies, for a limited time; which said recited act has been continued by several subsequent acts of parliament.*"

If wool, &c. intended to be sent coast-wise, or carrying towards the sea without entry thereof having been made, to be forfeited, &c.

† *Seet.* 15. By 28. Geo. 3. c. 38. s. 11. it is enacted, "That all and every owner and owners of wool, or any other the said herein-before enumerated woollen and worsted articles, and which are hereby prohibited from being exported, or his, her, or their agent or agents, who shall at any time hereafter carry, or cause to be carried, any wool, or any other the said last-mentioned articles, to any port or place on the sea-coast within the said kingdom of *Great Britain*, with an intention to convey the same to any other port or place on the sea-coast within the same kingdom, from whence the same may be shipped off, or otherwise transported, conveyed, or carried into foreign parts, shall, in the first place, cause a
" due

“ due entry to be made of the said wool, and other the said
 “ last-mentioned articles, at the port from whence the same
 “ shall be so intended to be conveyed, containing the exact
 “ weight, marks, and numbers of the same, before he, she,
 “ or they, shall presume to load or carry away any of the
 “ said wool, or the last-mentioned articles, within five miles
 “ of any such port or place on the said sea-coasts, from
 “ whence the same is or are so to be conveyed; and if any
 “ wool, or any other the said last-mentioned articles, shall
 “ be carrying towards the sea, for the purpose aforesaid,
 “ without being first entered in manner aforesaid, and with-
 “ out being accompanied with a certificate of such entry,
 “ and which the officer with whom such entry shall be made
 “ is hereby required to give, the wool, and other the afore-
 “ said articles, so found, and also the horse or horses, or
 “ other beast, cart, waggon, or other carriages conveying
 “ the same, shall be forfeited for the benefit of the person
 “ or persons who shall seize thereupon.”

† *Stat. 16.* By 28. Geo. 3. c. 38. s. 12. it is provided,
 “ That the aforesaid clause is not intended, nor shall be
 “ construed to extend, to the hindering any person or per-
 “ sons from carrying his, her, or their wool from the place
 “ of shearing the same, on horses, or by carts and wag-
 “ gons, to his, her, or their own dwelling-house or houses,
 “ or out-houses thereunto belonging, though the same be
 “ within five miles or less of the sea; so as such person
 “ or persons, within ten days after the shearing of the said
 “ wool, and before he, she, or they remove or otherwise
 “ dispose of the same, or any part thereof, from the place
 “ where it was first carried after shearing, do under his,
 “ her, or their hands, certify to the officers of the customs
 “ in the next adjacent port, the true quantity of the said
 “ wool; (that is to say) of the number of fleeces; and
 “ where the same is housed, and that such person or persons
 “ do not remove, or otherwise dispose of the said wool to
 “ any other place, without first certifying to the officer of
 “ such port, under his, her, or their hands, of his, her, or
 “ their intention to remove the same, three days at least
 “ before such removal; and the officer and officers in their
 “ respective ports, and the limits of such ports, are hereby
 “ required to receive and keep such certificates, and to make
 “ a register of them; but in case any such person or per-
 “ sons shall neglect to make and send such certificate to the
 “ officer or officers of the next adjacent port as aforesaid,
 “ or shall remove, or otherwise dispose of any of the said
 “ wool before such certificate of his, her, or their intention
 “ so to be made and delivered as aforesaid, such person or

but not to ex-
 tend to wool
 carrying from
 the place of
 shearing to
 the owner's
 house, though
 within 5 miles
 of the sea; if
 the quantity
 be certified to
 the officer of
 the next port,
 as also the in-
 tention to re-
 move it.

Officer to re-
 gister such
 certificates.

“ persons shall have no benefit by this proviso, but be
“ liable to the penalties expressed in the foregoing clause.”

If there be no
port within
five miles,
certificates to
be given to a
justice, &c.

† *Sec. 17.* By 28. Geo. 3. c. 38. f. 13. it is also pro-
vided, “ That if such next adjacent port shall happen to be
“ at a greater distance than five miles from the dwelling-
“ house or houses of such aforesaid person or persons, that
“ then and in every such case every such aforesaid entry,
“ notice, or certificate, shall and may be made or given to
“ any one of his majesty’s justices of the peace, or any
“ officer of his majesty’s revenue, nearest to the dwelling-
“ house or houses of such person or persons; any thing
“ herein contained to the contrary thereof in anywise not-
“ withstanding.”

Quantity of
wool of sheep
shorn for mar-
ket between
March 1 and
July 1, need
not be certi-
fied till after
the general
shearing, if
three days
previous no-
tice of the re-
moval be cer-
tified as afore-
said.

† *Sec. 18.* By 28. Geo. 3. c. 38. f. 14. it is further pro-
vided, “ That in case any sheep shall be shorn between the
“ first day of *March* and the first day of *July* in each year,
“ for the sole purpose of sending them to market, and in
“ case the owner or owners of such sheep shall not remove
“ or otherwise dispose of the wool or fleeces which shall
“ be shorn from such sheep, from the places where the same
“ were first carried after shearing, without first certifying in
“ three days in manner aforesaid, it shall not be necessary
“ for such owner or owners to certify the true quantity of
“ the said wool and number of such fleeces, and where
“ the same are housed, until such owner or owners shall
“ certify in manner before-mentioned, the quantity of the
“ wool and number of the fleeces shorn from the whole
“ of the flock or flocks belonging to such owner or owners,
“ after the general shearing for that season of the said flock
“ or flocks.”

Qualified per-
sons may seize,
for their own
use, wool, &c.
found near the
sea or any na-
vigable river,
with an intent
to be ex-
ported.

† *Sec. 19.* By 28. Geo. 3. c. 38. f. 15. it is enacted,
“ That it shall and may be lawful to and for any person
“ or persons, authorized and qualified as herein-after is
“ mentioned, to seize, take, and challenge, to and for his
“ and their own use and benefit, all such wool, woollens,
“ mortlings, shortlings, and other the said woollen and
“ worsted articles, fullers earth, fulling clay, and tobacco-
“ pipe clay, which he or they shall happen to see, know,
“ or discover, to be brought, carried, or laid on shore at or
“ near the sea, or any navigable river, to the intent or
“ purpose to be exported or conveyed out of the said king-
“ dom of *Great Britain*, or out of the isles aforesaid, or
“ any of them, contrary to the true intent and meaning
“ of this act; and the offender or offenders therein shall
“ be subject and liable to the like forfeiture, pains, and
“ penalties,

Penalty on
the offenders.

“ penalties, as persons by this act are subject unto, for ex-
 “ porting, transporting, or shipping of wool, or other the
 “ commodities aforesaid, contrary to the true intent and
 “ meaning hereof.”

† *Señ.* 20. By 28. Geo. 3. c. 38. f. 16. it is provided, Wool for the
 “ That it shall and may be lawful to export and transport use of *Jersey*,
 “ the several quantities of wool herein-after mentioned &c. may be
 “ out of or from the port of *Southampton* only, unto the exported from
 “ isles of *Jersey*, *Guernsey*, *Alderney*, or *Sark*, by or for the *Southampton*
 “ only use or behoof of any of the inhabitants of the said under the re-
 “ isles, or some or one of them, but under and subject to gulations
 “ the regulations in this act contained respecting the removal and shipping of wool, and so as such wool shall herein con-
 “ be shipped or laden on board some ship or vessel then
 “ the property of some person or persons residing within
 “ one of the said isles of *Jersey*, *Guernsey*, *Alderney*, or
 “ *Sark*, and so as such person and persons as shall so ship
 “ or put on board such wool aforesaid in any such ship or
 “ other vessel, do, before the shipping or putting on board
 “ such wool, deliver unto the collector, customer, comp-
 “ troller, surveyor, or searcher of the port of *Southampton*
 “ aforesaid (out of which the same wool is to be exported),
 “ a writing under the hand and seal of the governor of the
 “ said isle of *Jersey*, or of his deputy or deputies, as to the
 “ wool which is to be exported to the said island; and un-
 “ der the seal of the said governor of *Guernsey*, or of his
 “ deputy or deputies, as to the wool which is to be exported
 “ to the said isles of *Guernsey*, *Alderney*, and *Sark*, or any of
 “ them; in which writing it shall be expressed that the
 “ party named therein is authorized and appointed to ex-
 “ port or cause to be exported out of the port aforesaid so
 “ much wool, expressing the number of tods, to the same
 “ isles, or some or one of them, to be used and manufac-
 “ tured in one of the same isles, or in some of the members
 “ or parts of the same, and that such party, so authorized
 “ and appointed to export or cause to be exported such
 “ wool, hath, before the making and sealing of the said
 “ writing, entered into sufficient bond to his majesty’s
 “ use for the landing of the said wool in manner afore-
 “ said.”

† *Señ.* 21. By 28. Geo. 3. c. 38. f. 17. to the intent that Quantity that
 the quantity of wool to be exported out of the port of may be ex-
Southampton aforesaid into the said isles, or either of them. ported annu-
 in any one year, may not exceed the quantity hereunder ally to *Jersey*,
 specified; (that is to say) unto the isle of *Jersey* four thousand &c.
 and no more, of uncombed wool; and unto the
 isle of *Guernsey* two thousand tods, and no more, of un-

Governor of
Jersey, &c.
not to autho-
rize the ex-
portation of
more than the
quantity spe-
cified.

Customer of
Southampton to
be displaced,
and forfeit
50*l.* if he
permit a lar-
ger than the
allowed quan-
tity to be
laden.

Governors,
&c. autho-
rizing a larger
quantity to be
exported, to
forfeit 20*l.*
per tod.

combed wool; and unto the isle of *Alderney* four hundred
tods of uncombed wool, and no more; and unto the isle of
Sark two hundred tods of uncombed wool, and no more,
each tod not exceeding thirty-two pounds in weight; it is
further enacted, " That the governor of the said isle of
" *Jersey*, or his deputy, for whom he shall answer, shall not
" make to any person or persons any writing or writings,
" such as is above specified, to authorize and appoint such
" person or persons as aforesaid to fetch, export, or trans-
" port, out of the port of *Southampton* aforesaid unto the
" said isle of *Jersey*, in any one year, any greater quantity
" of wool than four thousand tods; and that the governor
" of the said isle of *Guernsey*, or his deputy, for whom he
" shall answer, shall not make to any person or persons any
" writing or writings, such as is above specified, to authorize
" and appoint such person or persons as aforesaid to fetch,
" export, or transport, out of the port above specified, unto
" the said isles of *Guernsey*, *Alderney*, and *Sark*, in any one
" year, any greater quantity of wool than two thousand
" tods for *Guernsey*, four hundred tods for *Alderney*, and
" two hundred tods for *Sark*; and that the customer of the
" port of *Southampton* aforesaid shall keep a true account
" of all the said quantity of wool so by him permitted to
" be laden by this act, and shall not permit any greater
" quantity of wool to be laden than by this act is prescribed,
" in any one year, to any of the said islands respectively,
" under any pretence whatsoever, upon the penalty of the
" forfeiture of his place, and of the sum of five hundred
" pounds in money, one moiety whereof to the king's
" majesty, his heirs or successors, and the other moiety to
" him or them that will sue for the same in any court of
" record, wherein no essoin, protection, or wager of law,
" nor more than one imparlance, shall be allowed: and if
" any of the governors of the said isles, their or either of
" their deputy or deputies, shall give, grant, or make any
" licence or licences for exporting from *Southampton* afore-
" said into the said isles respectively any greater quantity of
" such wool than is before, by the true meaning of this act,
" limited and appointed in that behalf; that then the re-
" spective governor or governors of such of the said isles
" shall forfeit and pay to the king's majesty, his heirs or
" successors, the sum of twenty pounds of lawful money of
" *Great Britain* for every tod of wool which shall be so
" licensed to be exported, over and above the rate or pro-
" portion of wool in and by this act, or the true meaning
" thereof, limited or appointed, one moiety whereof shall
" be paid to the king's majesty, his heirs or successors, and
" the other moiety thereof to him or them that will sue for
" the same in any court of record, wherein no essoin, pro-
" tecti-

“ taction, or wager of law, nor more than one imparlance,
 “ shall be allowed.”

† *Stat.* 22. By 28. Geo. 3. c. 38. s. 18. it is enacted, rs. to be paid for licence and entry.
 “ That the respective governors aforesaid, or their respec-
 “ tive deputies, or any of their clerks, officers, or servants,
 “ for the granting, making, signing, or sealing of every such
 “ writing of licence before directed, and for the entering a
 “ remembrance of the same into some book which they shall
 “ have and keep for that purpose, shall have and take the
 “ sum of one shilling, and no more.”

† *Sect.* 23. By 28. Geo. 3. c. 38. s. 19. it is enacted, No wool, &c. to be shipped, but in vessels belonging to natural-born subjects resident in Great Britain.
 “ That no wool, or any of the herein-before enumerated
 “ woollen or worsted articles, fullers earth, fulling clay, or
 “ tobacco-pipe clay, shall, on any pretence whatever, be
 “ put on board any ship or other vessel, hulk, or boat,
 “ whereof any alien born, or whereof any natural-born
 “ subject not inhabiting within the kingdom of *Great Bri-*
 “ *tain*, shall be owner or part owner; and every such ship
 “ or vessel, hulk, or boat. wherein any such wool, or other
 “ articles herein-before enumerated, shall be shipped, put,
 “ or laid on board, contrary to the true intent and mean-
 “ ing of this act, shall be forfeited to and for the use
 “ of the person and persons seizing the same: provided
 “ always, that this act shall not extend to any lamb skins
 “ ready dressed and prepared, fit and useful for fur or
 “ linings.” Not to extend to lamb skins dressed for fur or linings.

† *Stat.* 24. By 28. Geo. 3. c. 38. s. 20. it is enacted, Wool may be sold, &c. within 15 miles of the sea in Kent and Sussex, where the parties have given the bond required, &c.
 “ That it shall and may be lawful for any buyer or manu-
 “ facturer of wool within the said counties of *Kent* and
 “ *Sussex*, residing within fifteen miles of the sea, having
 “ given such bond, with sureties, as is before-mentioned,
 “ to sell any wool to any buyer or manufacturer of wool
 “ within the said counties, who has also given such bond
 “ with sureties, as is aforesaid, and to remove and lodge
 “ the same at the warehouse or other place belonging to
 “ the person or persons to whom the same shall be sold,
 “ and who has entered into such bond, with sureties, as is
 “ aforesaid, as often as shall be thought necessary, although
 “ the person or persons purchasing the same shall live
 “ within fifteen miles of the sea, such wool being removed,
 “ and such person or persons giving such notice of the
 “ lodging and housing thereof, as is required by the said
 “ act of the ninth and tenth years of the reign of his late
 “ majesty king *William the Third*.”

Wool shorn
or housed
within ten
miles of the
sea in *Kent*
and *Sussex*
may be car-
ried to fairs
for sale, &c.
on permit.

† *Sec. 25.* By 28. Geo. 3. c. 38. f. 21. it is provided,
“ That nothing in the said recited act contained shall ex-
“ tend, or be construed to extend, to prevent or hinder any
“ wool shorn, or housed, laid up or lodged within ten miles
“ of the sea side, within the counties of *Kent* and *Sussex*,
“ or either of them, from being removed or carried to any
“ town, field, or place, where a regular and established
“ fair shall be held for the sale of wool; and in case the
“ same shall not be sold or disposed of at such fair, to bring
“ back such wool to the house or place from whence the
“ same had been taken; provided that, previous to the
“ removal of such wool, a permit be taken out containing
“ the quantity of the wool to be removed, and to continue
“ in force for and during such time as may be necessary for
“ the removal of the same to the fair as aforesaid, and the
“ returning thereof to the house or place from whence the
“ same had been taken, in case the same shall not be sold
“ or disposed of at such fair, and the proper officers are
“ hereby required to grant all such permits upon application
“ to them made for that purpose from the grower of the
“ wool.”

Permits for
wool so sold
to be pro-
duced to the
officer, &c.

† *Sec. 26.* By 28. Geo. 3. c. 38. f. 22. it is enacted,
“ That every permit shall accompany the wool for the re-
“ moval of which the same shall have been granted, and
“ shall, in case of such wool being sold or disposed of at
“ the fair whereto the same shall be carried, be produced by
“ the purchaser or purchasers thereof to the proper officer
“ or officers, who shall then grant to such purchaser or pur-
“ chasers another permit, or other permits, for the taking
“ such wool from such fair, and which permit or permits
“ shall specify the quantity of wool to be moved, and the
“ time during which it shall be to continue in force.”

Wool returned
unfold from
fairs to be
subject to the
same rules as
before re-
moval.

† *Sec. 27.* By 28. Geo. 3. c. 38. f. 23. it is enacted,
“ That in case of the return of any such wool unfold to the
“ house or place from whence the same shall have been
“ taken, the same shall become subject and liable to the
“ same rules, restrictions, and laws, as it would have been,
“ in case the same had never been moved, or taken to any
“ fair as aforesaid.”

Persons coun-
terfeiting cer-
tificates, &c.
to forfeit 20l.

† *Sec. 28.* By 28. Geo. 3. c. 38. f. 24. it is enacted,
“ That if any person or persons whosoever shall counter-
“ feit, erase, or in anywise alter any certificate or acknow-
“ ledgment in the said recited act mentioned, or any licence,
“ certificate, or instrument hereby directed to be made or
“ given, or shall cause or procure the same or either of
“ them to be counterfeited, forged, erased, or altered in any
“ ref-”

“ respect, or shall knowingly make use of any counterfeited
 “ or altered licence, certificate, or acknowledgment, he, she,
 “ or they so offending shall forfeit and pay the sum of
 “ twenty pounds for every such offence to any person or
 “ persons who shall sue for the same.

† *Sect. 29.* By 28. Geo. 3. c. 38. s. 25. it is further enacted, “ That no wool, or any other the aforesaid wool-
 “ len or worsted articles, and which are hereby prohibited
 “ from being exported, shall be removed or carried towards
 “ the sea, within five miles of the sea-coast of any part
 “ of the kingdom of *Great Britain*, upon any pretence
 “ whatever, between sun-setting and sun-rising, upon pain
 “ of the same being forfeited, together with the horses,
 “ waggon, cart, or carriage, in and by which such wool,
 “ and other the said woollen and worsted articles, shall be
 “ so conveying, for the benefit of the person or persons
 “ seizing the same; and the driver or drivers of every such
 “ waggon, cart, or carriage, knowing thereof, and being
 “ thereof convicted, shall be committed to the house of cor-
 “ rection, for the space of one month, there to remain with-
 “ out bail or mainprize.”

Wool, &c.,
 removing be-
 tween sun-
 setting and
 sun-rising,
 within five
 miles of the
 sea, to be for-
 feited, &c.

† *Sect. 30.* By 28. Geo. 3. c. 38. s. 26. it is pro-
 “ vided, “ That nothing in the last aforesaid clause contain-
 “ ed shall extend, or be construed to extend, to prevent or
 “ hinder any farmer or grower of wool from removing
 “ or carrying, at any time after sun-setting, such wool
 “ as shall have been shorn that day, from the place or
 “ places of shearing the same to the dwelling-house or
 “ store-house of such farmer or grower, although such re-
 “ moval shall be towards the sea, and within five miles of
 “ the coast thereof.”

but not to ex-
 tend to wool
 shorn, and
 carried after
 sun-setting,
 the same day,
 to the owners
 houses.

† *Sect. 31.* By 28. Geo. 3. c. 38. s. 27. it is also pro-
 “ vided, “ That nothing herein contained shall prevent or
 “ hinder any person or persons from carrying and con-
 “ veying, at any time, any parcels of woollen or worsted
 “ yarn twisted, of two or more threads, and manu-
 “ factured and prepared for knitting, so as each parcel
 “ be *bona fide* directed to, and carrying for and to the
 “ residence or shop of some retailer or retailers of such
 “ woollen or worsted yarn, and so as there be not more
 “ than fourteen pounds weight, directed to and carrying
 “ for any one person at the same time, and so as such
 “ parcel be marked according to the directions of the act
 “ or acts of parliament requiring the marking thereof.”

Worsted
 yarn, not ex-
 ceeding 14 lb.
 prepared for
 knitting, may
 be carried to
 retail shops,
 &c.

How wool,
&c. is to be
packed.

Penalty for
neglect.

Worsted yarn
may be packed
in paper, if
marked, &c.

Justices may
order wool,
&c. unstamped
on the pack-
age, to be re-
turned, but
not to mitigate
the penalty
below 6d. per
lb. weight.

Wool, &c. not
packed ac-
cording to this
act to be for-
feited, and 3s.
for every lb.
weight.

+ *Seft.* 32. By 28. Geo. 3. c. 38. f. 28. it is further enacted, " That no wool, woolfels, mortlings, shortlings, wool-flocks, worsted hay, or woollen yarn, shall be packed up in any other package otherwise than packs or trusses of leather or canvass, commonly called *pack cloths*, or in linen or woollen; and all such packs or trusses of leather, canvass, linen, or woollen, shall be stamped or marked on the outside thereof with the word *wool*, in large characters, not less than three inches in length, on forfeiture of all such wool, or other the aforesaid articles, to the person or persons seizing the same, and also upon forfeiture, by the person or persons to whom such wool or other aforesaid articles shall belong, of any sum or sums of money not exceeding one shilling for every pound weight of such wool, or other the aforesaid articles so seized, to the person or persons seizing the same, as the court or justices before whom such wool, or other the aforesaid articles, shall be condemned, shall direct: Provided always, that nothing herein contained shall extend to prevent any person from packing or putting any worsted or woollen yarn in paper, so that such paper is fairly directed to the person or persons to whom the same is intended to be sent, and the word *worsted* or *yarn*, as the case may be, wrote or marked thereon, in letters not less than one inch in length, and that the quantity in any one such paper contained do not exceed fourteen pounds in weight."

+ *Seft.* 33. By 28. Geo. 3. c. 38. f. 29. it is provided, " That the justices before whom any complaint or information respecting the word *wool* not being stamped or marked on the outside of the package of such last enumerated articles, according to the directions of this act, shall be made, shall and may, and they are hereby empowered, if they shall so think fit, to order and direct the wool, and other the said herein-before enumerated articles which shall have been seized, to be returned to and delivered up to the owner or owners thereof; but that in every such case the forfeiture or penalty incurred by such offence shall not be mitigated or reduced below sixpence for every pound weight of such wool, or articles so seized."

+ *Seft.* 34. By 28. Geo. 3. c. 38. f. 30. it is further enacted, " That all and every person and persons who shall pack any wool, or other the aforesaid woollen or worsted articles, in any box, barrel, cask, case, chest, or any other package, otherwise than according to the directions herein-before contained, or who shall press
" together,

“ together, or cause or procure to be pressed together,
 “ with any screws, presses, or other engine; any wool
 “ whatsoever, or any yarn made of wool, or other the
 “ woollen or worsted articles by this act prohibited from
 “ being exported, into any pack, truss, or other wrap-
 “ per, or put, press, pack, or stean the same, or cause to
 “ be put, pressed, packed, or steaned, into any butt, pipe,
 “ hogthead, chest, or other cask or vessel, upon any pre-
 “ tence whatsoever, shall forfeit all such wool, or other
 “ aforesaid woollen or worsted articles, with the package
 “ thereof, and three shillings for every pound weight of
 “ wool, or other such woollen or worsted articles, so put,
 “ pressed, packed, or steaned, the whole of which penalties
 “ shall go and be paid, by the owner or packer of such
 “ wool, or other the aforesaid woollen or worsted articles,
 “ to the person or persons who shall seize the same, or sue
 “ for such forfeiture.”

† *Stat. 35.* By 28. Geo. 3. c. 38. s. 31. it is further enacted, “ That if any person or persons shall press to-
 “ gether, or cause or procure to be pressed together, with
 “ any screws, presses, or other engine, any wool, or other
 “ the woollen or worsted articles hereby prohibited from
 “ being exported, into any truss, sack, pack, bag, or other
 “ wrapper, or shall put, press, pack, or stean the same, or
 “ cause or procure to be put, pressed, packed, or steaned
 “ into any butt, pipe, hogthead, chest, or any other cask
 “ or vessel, upon any pretence whatsoever, contrary to the
 “ true intent and meaning of this act, every person or
 “ persons so offending, and all person and persons aiding
 “ and assisting in such packing, shall, over and above the
 “ penalties and forfeitures before-mentioned, be subject
 “ and liable to the same pains and penalties as are herein-
 “ before directed to be inflicted upon exporters of wool;
 “ and the court and justices by and before whom such
 “ person or persons shall be tried and convicted, shall, and
 “ hereby have power and authority to punish every such
 “ offender accordingly: provided always, that in case any
 “ person or persons who may have assisted in such illegal
 “ package shall, before his, her, or their being apprehend-
 “ ed for the same, appear before any of his majesty’s justices
 “ of the peace, and then and there make a true discovery
 “ of the master packer, and other the persons concerned
 “ in such illegal package, so that he, she, or they may be
 “ prosecuted to conviction, then the person or persons
 “ giving such information shall not be liable to the pains
 “ and penalties aforesaid, and, on conviction of such of-
 “ fender or offenders, shall be entitled to the wool, or
 “ other the woollen or worsted articles so packed; Pro-
 “ vided

Persons pack-
 ing wool, &c.
 contrary to
 this act, or as-
 sisting therein,
 to be liable to
 the same pe-
 nalties as ex-
 porters of
 wool.

Persons assist-
 ing in such il-
 legal package,
 giving infor-
 mation of the
 master packer,
 &c. or master
 packers, &c.

discovering
 their employ-
 ers, to be en-
 titled to the
 wool.

and the em-
ployers to be
liable to the
penalties on
exporters of
wool

“ vided always, that in case the master packer, or any per-
“ son or persons assisting in such package, shall, before
“ any information shall be taken against him, her, or
“ them therein, discover to any justice of the peace the
“ name or names of the person or persons by whom he,
“ she, or they was or were employed to pack or press the
“ same, so that such person or persons by whom he, she,
“ or they was or were employed, may be prosecuted to con-
“ viction for the same, then such master packer, or the
“ person or persons who shall give such information, shall
“ not be liable to the pains and penalties aforesaid, and
“ shall be entitled to the wool, or other the woollen or
“ worsted articles so sent to be packed, and the person or
“ persons directing such wool, or other the aforesaid woollen
“ or worsted articles, so to be packed, shall, on conviction
“ for the same, be liable to and shall suffer the pains and
“ penalties herein-before directed to be inflicted on expor-
“ ters of wool.”

Wharfingers
to enter into
bond not ille-
gally to ship
wool, and to
keep an ac-
count of wool,
&c.

† *Stat. 36.* By 28. Geo. 3. c. 38. s. 32. IT IS RECITED,
“ That great quantities of wool are frequently lying at the
“ public wharfs in different ports of *Great Britain*, which
“ wool being under no controul of the commissioners of the
“ customs, or their officers, evil-disposed persons may in the
“ night-time put the same on board vessels ready for sailing
“ to foreign parts; and also in many cases, where wool is
“ regularly entered to be put on board vessels bound coast-
“ ways, it is easy to put on board such vessels in the night-
“ time a larger number of packs of wool than have been
“ duly entered for that purpose, and which, by being con-
“ cealed under such packs as have been duly entered, cannot
“ easily be discovered, and which wool may after the said
“ ship has proceeded some way on her intended voyage, be
“ put on board other vessels bound to foreign parts:” for
“ remedy whereof IT IS ENACTED, “ That every person and
“ persons who shall keep any wharf for the reception of
“ wool in or at any port in *Great Britain* shall, within six
“ months after the passing of this act, and every person
“ and persons who shall hereafter keep any such wharf
“ shall within one month after he, she, or they shall be-
“ gin to keep the same, enter into a bond to the use of
“ the king’s majesty, his heirs and successors, in the pe-
“ nalty of two hundred pounds, and which shall be de-
“ posited with the commissioners of his majesty’s customs
“ at the port of *London*, that no part of the wool which
“ shall be lodged or deposited with him, her, or them,
“ shall, with his, her, or their privity or consent, be ille-
“ gally put on board any ship or vessel; and such whar-
“ finger shall also keep a regular entry and account of the
“ quantity,

“ quantity of bags or cloths of wool by them received and
 “ delivered, the time when, and the names and residence
 “ of the persons from whom such wool was so received,
 “ and to whom such wool was so delivered, with the
 “ marks and numbers upon the sheets, and weight of
 “ such wool, a copy of which account shall be by him,
 “ her, or them delivered to the principal officers of the
 “ customs, at the port at which such wharfinger shall re-
 “ side, at the end of every six months, and oftener, if
 “ the same shall be required by such officer; and if any
 “ wharfinger shall refuse to enter into such bond as afore-
 “ said, within the said respective times, he, she, or they so
 “ refusing, shall forfeit and pay the sum of two hundred
 “ pounds to the person or persons who shall sue for the
 “ same; and in case such wharfinger shall refuse to keep
 “ and deliver such account, or shall be convicted of keep-
 “ ing or delivering a false account, every such wharfinger
 “ shall, for every such offence, forfeit and pay the sum of
 “ fifty pounds, to be paid to the person or persons who
 “ shall sue for the same; and moreover, if such wharfinger
 “ shall at any time knowingly permit or suffer any such
 “ wool to be put on board any ship or vessel, otherwise
 “ than according to the directions in this act contained,
 “ then such wharfinger, and also all and every person and
 “ persons who shall be aiding and assisting therein, shall on
 “ conviction be subject and liable to the pains and penalties
 “ herein-before enacted against the exporters of wool; and
 “ any person giving information, so as that such wharfinger,
 “ person and persons, or any of them, may be convicted,
 “ every such informer shall be entitled to the sum of forty
 “ pounds, which sum shall be paid to such informer by the
 “ commissioners of his majesty's customs immediately after
 “ such conviction.”

Penalty on re-
 fusing to give
 bond, or to
 keep an
 account of
 wool, &c. or
 for suffering it
 to be illegally
 shipped.

Informers to
 be entitled to
 40l.

† *Sec. 37.* By 28. Geo. 3. c. 38. s. 33. it is further
 enacted, “ That every person and persons keeping a wharf
 “ at which any wool shall be lodged or received shall,
 “ and he, she, and they is and are hereby required, with-
 “ in seven days next after he, she, or they shall receive any
 “ wool at such wharf by land carriage, or by inland navi-
 “ gation, to transmit or deliver a note in writing, signed
 “ by the owner of such wharf, or his, her, or their agent,
 “ which shall certify and acknowledge the quantity of wool so
 “ received, and the number of sheets in which the same is
 “ contained, to the customer or comptroller at the port
 “ at which such wharf shall be kept, in case there shall
 “ happen to be at such port or place any such officer, and,
 “ for want thereof, to such other officer of the customs (if
 “ any) as shall happen to be stationed at such port or place,
 “ up-

Wharfingers
 to give an ac-
 count to the
 proper officer
 of the quantity
 of wool re-
 ceived, on pe-
 nalty of 10l.

“ upon pain of forfeiting, for every neglect, the sum of ten
 “ pounds to any person or persons who shall sue for the
 “ same.”

Regulations
 for shipping
 wool, &c. to
 be carried
 coastwise.

† *Stat.* 38. By 28. Geo. 3. c. 38. s. 34. “ And
 the better to prevent any fraudulent exportation of wool,
 woollens, mortlings, shortlings, combed wool, woollstocks,
 or woollen bay yarn, worsted yarn, cruels, or wool slightly
 manufactured, and which are hereby prohibited from be-
 ing exported, under the pretence of carrying the same
 coastwise in the kingdom of *Great Britain*;” it is further
 enacted, “ That no wool, or any other the last before
 “ enumerated articles, and which are hereby prohibited
 “ from being exported, shall be put on board any ship,
 “ vessel or boat, to be carried coastwise, or from one port
 “ in *Great Britain* to another, unless notice be first given
 “ to the commissioners or chief managers of the customs,
 “ or to the customer or collector and comptroller of the
 “ customs at the port from which the same is intended to
 “ be sent, of the quantity, quality, and package, together
 “ with the marks, numbers, and weight thereof, with the
 “ name of the ship, and the master or commander, on
 “ board of which the said goods are to be laden, together
 “ with the name or names of the owner or owners of the
 “ said goods, and the place of his or their abode or habi-
 “ tation, and the place and port at which the same are in-
 “ tended to be landed, and the names of the person or per-
 “ sons to whom the same are consigned; and also unless a
 “ bond be first entered into to the use of the king’s majesty,
 “ his heirs and successors, by two good and sufficient per-
 “ sons, in treble the value of the said goods so intended to
 “ be carried coastwise, that the same shall (the danger of
 “ the seas excepted) be landed accordingly, which said
 “ bond shall be executed by the owner or owners of the
 “ said goods, or some person or persons by him, her, or
 “ them appointed to execute the same, and which execu-
 “ tion shall be deemed to be the act of such owner or
 “ owners, or shipper or shippers thereof; which said ship-
 “ per or shippers, if acting as agent, or having sold such
 “ goods to any person or persons, shall and may sue for
 “ and recover, of and from the proprietor or proprietors
 “ of the goods so shipped, all such sum and sums of money
 “ as such shipper or shippers shall or may pay, expend, or
 “ be put unto without their wilful default or negligence,
 “ for or by reason of his, her, or their entering into such
 “ bond or bonds: and in case any such bond or bonds
 “ shall be so entered into for any wool, or any other the
 “ last herein-before enumerated articles, being the property
 “ of different persons, then such owner or owners, or per-
 “ son

“ son or persons for whose account such bond was so entered into, shall be accountable for his, her, or their share of the money so expended, in proportion to the amount of such goods so shipped; and also unless a licence be first taken out under the hands of the commissioners or chief managers of the customs for the time being, or any three of them, or from the customer, or collector and comptroller of the customs where any such bond is given, for the lading, carrying, and landing thereof as aforesaid, which licence they are hereby required to grant without any fee or reward, or any other charge to the person demanding the same, any law, statute, or usage to the contrary in anywise notwithstanding; and if any wool, or other of the said last-mentioned goods, shall be carried or laden on board any ship, vessel, bottom, or boat, in order to be carried coastwise, or from one port to another, before such bond shall be entered into, and such licence taken out as aforesaid, and before all the directions in this act made to prevent the exportation thereof shall be fully and duly complied with, then all such wool, and other such last-mentioned articles, and which are hereby prohibited from being exported, or the value thereof, shall be forfeited, together with the ship, vessel, bottom, or boat, in which such goods shall be so laden or put on board, and all the guns, ammunition, tackle, apparel, and furniture, of or belonging to such ship, vessel, bottom, or boat, for the benefit of the person or persons first informing thereof.”

If wool &c. be not shipped to be carried coastwise, according to this act, to be forfeited, with the vessel.

† *Sec.* 39. By 28. Geo. 3. c. 38. f. 35. “ And whereas in that part of *Great Britain* called *Scotland*, there are a great many lochs or inlets of the sea, to and upon which it may be unavoidably necessary to carry wool, and other the said enumerated articles, from one part of the coast of such lochs or inlets to another part of the coasts of the same lochs or inlets, respectively, on board boats or other vessels; and that there are also, adjacent to the coasts of *Scotland*, a great many islands from whence wool, the produce of the said islands, must necessarily be brought to the mainland of *Scotland*, or be carried from such mainland to the said islands, by boats or other vessels:” it is therefore ENACTED, “ That the carrying, shipping, or landing of wool, and other the said enumerated articles, to such intent or purposes aforesaid, only to or in such lochs or inlets, or from such islands to the mainland of *Scotland*, or from such mainland to such islands, shall not be deemed or taken to be carrying, shipping, or landing of wool, or other the said articles, for the purpose of carrying

Wool, &c. may be carried from one part to another of the lochs, or from islands to the mainland, in *Scotland*, but not to sea, except under the regulations of this act.

“rying the same coastwise; nor shall the carrying, ship-
 “ping, or landing of such wool, or other the said herein-
 “before enumerated articles, to or in such lochs, or in-
 “lets, or from such islands to the mainland of *Scotland*; or
 “from such mainland to such islands, for such intent or
 “purposes as aforesaid only, be subject or liable to the re-
 “strictions or regulations herein contained, respecting the
 “carrying, shipping, and landing of wool, and other
 “the said articles intended to be carried coastwise, any
 “thing herein contained to the contrary thereof in any-
 “wise notwithstanding: Provided nevertheless, that no-
 “thing herein contained shall authorise the carrying
 “such wool, or any other the said articles, to open sea,
 “save as aforesaid, but under such restrictions and regu-
 “lations as are herein for that purpose mentioned and ex-
 “pressed.”

Customer at
 the port of
 shipping not
 sending pro-
 per notice to
 the officer at
 the port for
 which wool,
 &c. is shipped,
 to forfeit 10l.

† *Stat. 40.* By 28. Geo. 3. c. 38. s. 36. it is further
 enacted, “That when any wool, woollens, mortlings,
 “shortlings, combed wool, woolflocks, woollen or bay
 “yarn, worsted yarn, cruels, or wool slightly manufac-
 “tured, shall be shipped to be carried coastwise under the
 “authority of this act, the customer, or collector and
 “comptroller of his majesty’s customs at the port from
 “whence such goods shall have been shipped, shall, im-
 “mediately on the clearance of such ship at such port,
 “transmit a notice in writing, setting forth the quantity,
 “quality, and package of such wool, or other the said
 “last-mentioned articles, together with the marks and
 “numbers thereof, with the name of the ship in which
 “the same shall be shipped, and of the master or com-
 “mander thereof, to the customer, or collector and com-
 “ptroller of the port to which such wool, and other the
 “said last-mentioned articles, are intended to be convey-
 “ed, under the penalty of ten pounds, to be paid by the
 “officer neglecting to transmit such notice, which said
 “penalty shall be paid to the person who shall inform
 “against such officer; and that the bonds herein-before
 “directed to be entered into on the shipping of the said
 “wool, and other the said last-mentioned articles, shall
 “not be discharged until a certificate, under the hand
 “and seal of the customer, or collector and comptroller
 “of the port or place in *Great Britain* where the same
 “were landed, expressing the quantity, quality, and pack-
 “age, marks, numbers, name of the ship and master, out
 “of which such wool, and other the said last-mentioned
 “articles, were landed, shall be produced to and left with
 “the person or persons in whose possession such bond
 “shall be kept, at the custom-house of the port from
 “whence

Bonds given
 on shipping
 wool, &c. to
 be discharged
 by a certificate
 from the offi-
 cer at the port
 of landing; ;
 which he is to
 transmit to the
 officer at the
 port of ship-
 ping within
 seven days on
 penalty of 10l.

“whence the said wool, and other the said last mentioned articles, were shipped, and which certificate the said customer, or collector and comptroller of the said port at which such wool, and other the said last mentioned articles, shall be landed, is hereby required to transmit to the customer, collector and comptroller at the port from whence the same were shipped, within the space of seven days next after the landing thereof, under the penalty of ten pounds, to be paid by the officer neglecting to transmit such certificate to the person or persons who shall inform against such officer; and the said customer, or collector and comptroller at the port at which such wool, or other the said last mentioned articles, shall be landed, shall also grant and deliver another certificate of such landing to the masters or commanders of the ship or vessel from which the same shall be landed, without fee or reward, when the same shall be requested; and that all such bonds as shall remain undischarged by such certificate for the space of six calendar months, shall be transmitted to the commissioners of the customs at *London*, who are hereby required to put them in suit immediately; and if the wool, or other the said articles mentioned in such notices, shall not be landed at the port to which the same were consigned within a reasonable time for that purpose, then the customer, or collector and comptroller at the port to which the same were licensed to be sent, shall transmit a notice thereof to the customer, or collector and comptroller at the port from whence such wool or other articles were shipped, in order that proper inquiry may be immediately made in what manner the same have been disposed of or delivered, and which inquiry the said customer, or collector and comptroller, is and are hereby required to make without delay.”

Certificate of landing to be given the master of the vessel.

Bonds not discharged in six months to be sent to the commissioners of customs. Notice of wool not landed in a reasonable time to be sent to the officer at the port of shipping, who is to inquire how it has been disposed of.

† *Stat. 41.* By 28. Geo. c. 38. s. 37. it is further enacted, “That no wool or any other the said herein-before enumerated woollen or worsted articles, fullers earth, fulling clay, or tobacco-pipe clay, shall be put on board any ship, vessel, or boat, bound to parts beyond the seas, on any pretence whatsoever, under the penalty of forfeiture, for the benefit of the person or persons who shall inform thereof, of all such goods, and also of such ship, vessel, bottom, or boat, on which such goods shall be so laden or put on board, and all the guns, ammunition, tackle, apparel, and furniture belonging to such ship, vessel, bottom, or boat, and moreover the master or commander of such ship or vessel, bottom or boat, shall in such case be deemed the exporter thereof, and

Wool, &c. shipped for parts beyond the seas, to be forfeited, and the vessels.

Masters to be subject to the penalties, except they discover the shippers.

“ shall be subject and liable to the pains and penalties in
 “ such case made and provided, unless such master or com-
 “ mander shall and do, immediately upon his being appre-
 “ hended, discover and make known the person or persons
 “ who actually shipped such goods, and enter into a recog-
 “ nizance with two sufficient sureties, before some justice of
 “ the peace for the county, city, borough, or place, in or at
 “ which such last mentioned goods shall be discovered, to
 “ prosecute and give evidence against such shipper, so that
 “ he may be convicted thereof.”

Masters of
 vessels not re-
 gularly clear-
 ed out to for-
 eign parts, as
 well as all on
 board privy to
 any illicit
 transaction, to
 be liable to
 the same pe-
 nalties as ex-
 porters of
 wool.

† *Sec. 42.* By 28. Geo. 3. c. 38. f. 35. it is provided,
 “ That nothing in the above exception contained shall
 “ extend to the masters or commanders of ships or
 “ vessels not regularly cleared out to foreign parts, but
 “ that if any wool, or other the said last mentioned goods,
 “ shall be discovered on board any such ship or vessel,
 “ and where no such clearance can be exhibited, then and
 “ in such case the master or commander of such ship or
 “ vessel shall be deemed the shipper of such goods, and such
 “ master or commander, and also all and every person and
 “ persons on board any such ship or vessel, knowing of
 “ any such illicit transaction, shall be liable to the pains
 “ and penalties herein-before enacted against the exporters
 “ of wool: provided also, that in case any person or persons
 “ on board any ship not regularly cleared out to foreign
 “ parts, other than the master or commander thereof, shall,
 “ immediately on his or their being apprehended, give in-
 “ formation, so that such master or commander may be
 “ convicted, or the ship or vessel condemned, every such
 “ person and persons so informing shall not be liable to
 “ any pains or penalties to which he or they might other-
 “ wise be liable, and shall also be entitled to a reward of
 “ forty pounds, which reward shall be paid to such informer
 “ or informers by the commissioners of his majesty’s customs
 “ immediately after such conviction.”

Informers to
 be entitled to
 40l.

Masters of
 vessels or driv-
 ers of carts,
 &c. exempted
 from punish-
 ment, if it is
 proved from
 the smallness
 of the quan-
 tity that they
 were not privy
 to wool, &c.
 being in their
 vessels, &c.

† *Sec. 43.* By 28. Geo. 3. c. 38. f. 39. it is also pro-
 vided, “ That nothing in this act contained shall ex-
 “ tend, or be construed to extend, to prevent evidence
 “ from being received, in any suit or information brought
 “ for the forfeiture of any vessel bound coastwise, or to
 “ foreign parts, which shall have been regularly cleared
 “ out, and also the guns, ammunition, tackle, apparel,
 “ and furniture thereto belonging, for or on account of
 “ any wool, or any other the said herein-before enume-
 “ rated articles, and which are hereby prohibited from be-
 “ ing exported, which shall be found or discovered on
 “ board any such vessel so regularly cleared out, or for
 “ the

“ the forfeiture of any other ship or vessel, other than
 “ such as shall not have been regularly cleared out, or for
 “ the forfeiture of any waggon, cart, carriage, horses, or
 “ other beast of burthen, wherein or whereupon any wool,
 “ or any other the said herein-before enumerated articles,
 “ shall be laid, or which shall be carrying or conveying
 “ the same, or in any prosecution which shall be brought
 “ against the master or commander of such vessel, owner,
 “ or driver of such waggon, cart, carriage, horse, or other
 “ beast of burthen, in order to shew, from the smallness
 “ of the quantity of the said wool, or other the said ar-
 “ ticles, that the same were on board such vessel, or with-
 “ in such waggon, cart, or carriage, or upon such horse
 “ or beast of burthen, without the knowledge and privy
 “ of the owner, or of the master or other person having
 “ the charge or command of such vessel, or the care of
 “ such waggon, cart, carriage, horse, or other beast of
 “ burthen, and without any wilful neglect, or want of rea-
 “ sonable care in the discharge of the duty of such owner,
 “ master, or other person having the charge or command
 “ of such ship or vessel, or the care of such waggon, cart,
 “ carriage, horse, or other beast of burthen; and in every
 “ such case where proof shall be made, from the smallness
 “ of the quantity of wool, or other the said articles, and
 “ other circumstances, that such small quantity was on
 “ board such vessel, or within such waggon, cart, or car-
 “ riage, or upon such horse or beast of burthen, without
 “ the knowledge, privy or consent either of the owner,
 “ or the master or other person having the charge or com-
 “ mand of such ship or vessel, or the care of such waggon,
 “ cart, carriage, horse, or other beast of burthen, and
 “ without any wilful neglect, or want of reasonable care,
 “ either in the owner, or in the master or other person
 “ having the charge or command of such ship or vessel, or
 “ the care of such waggon, cart, carriage, horse, or other
 “ beast of burthen, then, and in every such case, such
 “ owner, master, or commander, or crew on board such
 “ ship or vessel, person or persons, shall not be punished,
 “ nor shall such ship or vessel, ammunition, tackle, apparel,
 “ or furniture belonging thereto, or such waggon, cart,
 “ or other carriage, horse, or other beast of burthen, be
 “ forfeited, for or on account of such small quantity
 “ of wool, or other the said herein-before enumerated
 “ articles, having been found or discovered on board of
 “ such ship or vessel, or within such waggon, cart, or
 “ other carriage, or upon such horse or other beast of
 “ burthen.”

but the wool,
&c. to be for-
feited.

† *Stat. 44.* By 28. Geo. 3. c. 38. f. 40. it is pro-
vided, “ That the wool, and other the said herein-before
“ enumerated articles, hereby prohibited from being ex-
“ ported, which shall be found on board any such ship or
“ vessel, or within such waggon, cart, or carriage, or upon
“ such horse or beast of burthen, shall be forfeited to the
“ person or persons who shall find, discover, and seize the
“ same.”

Port officer to
keep a register
of all wool, &c.
sent coastwise,
and to send a
copy half-
yearly to the
commissioners
of customs.

† *Stat. 45.* By 28. Geo. 3. c. 38. f. 41. it is further
enacted, “ That a register of all wool, and other the ar-
“ ticles before enumerated, and sent coastwise, with the
“ quantity, quality, and package thereof, the name of the
“ ship and master, the name of the shipper or shippers
“ of such goods, and the name or names of the person or
“ persons to whom the same shall be consigned, and his
“ or their place of abode, and also a register of the return
“ of the landing of the wool or other articles so shipped,
“ shall be kept by the customer, or collector or comptrol-
“ ler at each port, and a copy thereof shall be trans-
“ mitted once in every six months to the commissioners
“ of his majesty’s customs at the port of *London*, there to
“ be registered in a book to be kept at the custom-house,
“ by some person or persons to be by the said commis-
“ sioners appointed for that purpose; and which register
“ and registers shall at all seasonable times be inspected,
“ on payment of the sum of one shilling by any person
“ or persons whomsoever, on application for that pur-
“ pose; and a printed copy of such register shall, within
“ sixty days next after the end of each year, be trans-
“ mitted by the commissioners of his majesty’s customs at
“ the said port of *London* to the respective custom-houses
“ within this kingdom, and which said copies so trans-
“ mitted shall be inspected by any person, on payment of
“ the like fee in manner aforesaid, upon application for that
“ purpose.”

The register
at the custom
house in *Lon-
don* to be in-
spected for 1s.
and a copy of
it transmitted
annually to
every custom
house.

If wool ship-
ped to be car-
ried coastwise
be unpacked,
the master of
the vessel to
forfeit 40s. for
each bag.

† *Stat. 46.* By 28. Geo. 3. c. 38. f. 42. it is further
enacted, “ That no master or commander of any ship or
“ vessel, who shall ship or load any wool to be carried
“ coastwise, shall, at any time, under any pretence what-
“ soever, unpack, or permit or suffer to be unpacked, any
“ wool to him delivered (except by or through abso-
“ lute necessity, of which necessity such master and com-
“ mander shall make oath in writing before one of his ma-
“ jesty’s justices of the peace, on his arrival at the port to
“ which such wool shall be consigned), upon pain of
“ forfeiting, for every bag so unpacked, the sum of forty
“ shil.

“ shillings to the owner or owners, proprietor or proprietors of such wool.”

† *Stat. 47.* By 28. Geo. 3. c. 38. s. 43. “ And for the better preventing of frauds in the collusive landing of any wool, or woollen or worsted yarn, or in the shipping or landing any of the several articles herein-before enumerated, carried coastwise:” it is further enacted, “ That none of the said articles carried coastwise shall be shipped or landed, but in the presence of the proper officers appointed to attend the same, nor at any other place or places than the lawful quays set out in the manner prescribed by the act of Frauds passed in the fourteenth year of king *Charles the second*, for *England, Wales, and Berwick upon Tweed*, and by the act passed in the sixth year of the reign of her late majesty *queen Anne*, for settling a court of exchequer in *Scotland* for that part of the united kingdom, or at such other wharfs or places as the commissioners of the customs, or any three of them (and which they are hereby empowered to do) shall from time to time, by writing under their hands, appoint for that purpose (such appointment to continue in force until they shall revoke the same) without special sufferance, and leave had and obtained from the commissioners or principal officers of the customs, upon pain of forfeiting the said wool, or other articles, or the value thereof, and three shillings for every pound weight of such wool, or other articles, to be paid, by the person or persons concerned in such unlawful shipping or landing, to the person or persons who shall inform thereof.”

† *Stat. 48.* By 28. Geo. 3. c. 38. s. 44. it is further enacted, “ That all cocquets for carrying wool, or any other the aforesaid articles, from any port within the kingdom of *Great Britain*, or the isles aforesaid, shall be written on paper, and not parchment, and signed by three or more of the chief officers of such respective ports, and all certificates of landing the same again, in any other of the said ports, shall be written upon paper only, and signed in like manner; and that all such wool, and other the aforesaid articles, both at shipping and landing, shall be weighed in the presence of the said officers giving such cocquets and certificates respectively, and that the exact weight, marks, and numbers of such wool, and other the aforesaid articles, so shipped and landed, shall be likewise particularly expressed in the said cocquets and certificates respectively, and written therein,

“ therein, without any obliteration, erasure, or interlineation whatsoever.”

Persons insuring the conveyance of sheep, &c. to foreign parts, liable to the same penalties as exporters of wool.

† *Stat.* 49. By 28. Geo. 3. c. 38. f. 45. it is further enacted, “ That all and every person and persons who by way of insurance, or otherwise, shall undertake or agree that any sheep, wool, or any other of the articles herein-before enumerated, shall be carried or conveyed to any parts beyond the seas, from any port or place whatsoever within this kingdom, contrary to the true intent and meaning of this act, or in pursuance of such insurance, undertaking, or agreement, shall deliver, or cause or procure to be delivered, any sheep, wool, or any of the said articles, in any parts beyond the seas, such person or persons, and all and every their aiders, abettors, and assistants, shall, upon his and their conviction, be liable to be punished in the same manner as is herein-before directed with respect to the exporters of wool.”

Persons paying for such insurance, liable to the like penalties, and to forfeit the articles insured,

† *Stat.* 50. By 28. Geo. 3. c. 38. f. 46. it is further enacted, “ That all and every person and persons whosoever, who shall pay or agree to pay any sum or sums of money for the insuring, conveying, or exporting any sheep, wool, or other the articles hereby prohibited from being exported, contrary to the true intent and meaning of this act, shall, upon his and their conviction, be liable to be punished in manner as herein-before directed respecting the exporters of sheep or wool; and moreover, such sheep, wool, or articles aforesaid, which shall be so insured, shall become forfeited to the person or persons who shall sue for the same.”

Any person concerned in such insurance giving information to the commissioners of the customs, to have the sheep, &c. or if the informant be insured, to receive back the premium, &c.

† *Stat.* 51. By 28. Geo. 3. c. 38. f. 47. it is further enacted, “ That in case the insurer, conveyer, or manager of or in such fraud, or the person or persons agreeing to insure, convey or manage therein, do and shall, within the space of six months after such transaction or agreement, first give notice thereof to the commissioners of the customs in *Great Britain* for the time being, so as the person or persons concerned with him, her, or them in such offence be convicted thereof, he, she, or they, so first making such discovery, shall not only be clearly acquitted and discharged of such offence, and from the punishment to which he, she, or they is or are liable by reason thereof, but shall also have, to his, her, or their own use, such sheep, wool, and other the articles herein enumerated, and which shall be insured, after the charges of prosecution are deducted, and shall likewise retain

“ retain and enjoy, to his, her, and their own use, the
 “ insurance money or reward, given or paid to him, her,
 “ or them therein; and in case the party or parties in-
 “ sured shall, within the like space of six months, first
 “ make discovery thereof to the said commissioners of the
 “ customs, so as the person or persons concerned with
 “ him, her, or them in such offence, shall be convicted
 “ thereof, he, she, or they so first discovering, shall recover
 “ and receive back such insurance money or premium as
 “ he, she, or they have or hath paid upon such insurance
 “ or agreement; and in case the said insurance money or
 “ premium shall not at the time of such discovery be
 “ actually paid, then the person or persons so first dis-
 “ covering is and are hereby saved harmless and indemnified
 “ from paying the same, or any part thereof, and all and
 “ every the agreement or agreements entered into for paying
 “ such monies is and are hereby declared to be null and
 “ void, and the person and persons so first discovering shall
 “ also be clearly acquitted and discharged of and from the
 “ punishment hereby directed to be inflicted upon him, her,
 “ or them, and to which he, she, or they would have been
 “ otherwise liable.”

† *Stat. 52.* By 28. Geo. 3. c. 38. s. 48. IT IS RE-
 CITED, “ That policies of insurance are commonly made Policies of in-
 on goods and merchandizes, as well as on ships and ves- insurance to be
 sels, wherein the insurer undertakes, in consideration of a void, if made
 premium given him by the assured, to bear all the risk on wool, &c.
 and hazard of the voyage, and it is generally unknown to foreign
 to the insurers what sort of goods and merchandizes are parts.
 laden on board any ship or vessel; whereby it frequently
 may happen that insurances may be made on wool or
 woollen yarn, or other the articles hereby prohibited
 to be exported, to be carried from *Great Britain* to foreign
 parts, as well as on the ships or vessels having on board
 such wool, woollen yarn, or other articles: and where-
 as the discouraging of all such insurances may be a means
 to prevent the fraudulent exportation of such wool, woollen
 and worsted yarn, and other the said herein-before enu-
 merated articles:” it is therefore ENACTED, “ That all
 “ policies of insurance which shall be made on goods and
 “ merchandizes laden or to be laden on any ship or vessel
 “ bound from *Great Britain* to foreign parts, which shall
 “ afterwards appear to be wool, woollen or worsted yarn,
 “ or any of the before-enumerated articles hereby pro-
 “ hibited from being exported, shall be deemed and taken to
 “ be null and void, notwithstanding any words or agree-
 “ ment whatsoever, which shall be inserted in any such
 “ policy of insurance, and nothing shall be recovered by
 H h 4 “ the

“ the assured from the insurer for loss or damage, or for the
 “ premium which shall have been given as the consideration
 “ for insuring such wool, woollen or worsted yarn, or
 “ such other articles; any law, custom, or usage, to the
 “ contrary notwithstanding.”

Commanders
 &c. of king's
 ships to search
 vessels, and
 seize such as
 have sheep,
 &c. on board
 without a
 licence.

+ *Stat. 53.* By 28. Geo. 3. c. 38. s. 49. it is further
 enacted, “ That it shall be lawful for the master or com-
 “ mander, or any other commissioned or deputed officer of
 “ any of his majesty's ships or sloops, in any port, creek,
 “ or road, or in the open seas, within the limits of the sta-
 “ tion which shall be assigned to any such ships or sloops,
 “ and he is hereby required to enter and search, or cause
 “ to be entered and searched, any ship, vessel, or boat, and
 “ if upon such search any sheep, wool, or any other of
 “ the said articles hereby prohibited from being exported,
 “ shall be found therein, and the master or commander
 “ of such ship, vessel, or boat, shall not immediately pro-
 “ duce to the commander of such ship or sloop a lawful
 “ cocquet or warrant, licensing such articles to be carried
 “ coastwise, or to the said isles, or some of them, such com-
 “ mander is hereby directed to take and seize such ship,
 “ vessel, or boat, and to carry the same, together with the
 “ crew and cargo thereof, into some port in *Great Britain*,
 “ and there deliver the same into the custody of the col-
 “ lector and comptroller of such port.”

Wool, &c.
 when seized,
 to be lodged
 in the king's
 warehouse till
 condemned;

+ *Stat. 54.* By 28. Geo. 3. c. 38. s. 50. it is further en-
 acted, “ That all the wool, and other the said articles
 “ hereby prohibited from being exported, found on board
 “ any ship, vessel, or boat, contrary to the intent and
 “ meaning of this act, and which are hereby declared to
 “ be forfeited, and which shall have been so seized by any
 “ of his majesty's ships or sloops, shall be lodged in the
 “ king's warehouse in such port where the same shall be
 “ taken or seized, or into which the same shall be brought,
 “ until condemned according to law, and being so con-
 “ demned, such wool and other such articles shall be ex-
 “ posed publicly to sale, after sixty days public notice
 “ being given in writing at the custom-house of the said
 “ port, and on the *Royal Exchange of London*, by inch of
 “ candle, to the last and best bidder; and all ships, vessels,
 “ or boats, that shall be so seized, and which are hereby
 “ declared to be forfeited, and which shall be condemned as
 “ aforesaid, shall, together with all their guns, tackle, furni-
 “ ture, and apparel, be exposed to sale in like manner, and
 “ the produce of the wool, or such aforesaid articles,
 “ ships, vessels, or boats, so sold as aforesaid, after deduct-
 “ ing the expences and charges of the prosecution and con-
 “ demna-

wool, &c.
 and vessels to
 be sold, and
 the produce
 divided as
 hereth men-
 tioned.

“demnation, shall be divided in manner following, (that is to say) one third part thereof to the commander or commanders, one third part to the officers of the ship or ships, sloop or sloops, that took the same, and the remaining third part to the mariners belonging to such ship or ships, sloop or sloops, to be equally divided and paid amongst the said mariners, by the collectors of the said port, or such person or persons as shall be authorized to pay the same; and that if such seizure shall be made upon the information of any person or persons not being a mariner on board any such ship or sloop so appointed to cruize, such informer or informers shall not only be indemnified from the pains, penalties, and forfeitures, to which exporters of the said prohibited articles, their aiders and abettors, are liable, but shall also receive one third part of the produce of such sale or sales, after deducting the expences attending the same, and the residue thereof shall be divided and distributed in manner as is before directed.”

+ *Sec. 55.* By 28. Geo. 3. c. 38. s. 51. it is further enacted, “That every commander of such ship or sloop neglecting his duty by this act required, shall lose and forfeit all pay and wages due to him or them, and suffer six months imprisonment, and be for ever incapable of serving his majesty in any office in the navy, customs, excise, or salt duties; and that any person or persons giving information against any such commander for neglecting his duty shall, on the conviction of such offender or offenders, be entitled to receive and have the sum of forty pounds, to be paid to such informer immediately after such conviction, by the commissioners of the customs, excise, or salt duties, or other his majesty’s revenue as herein-after mentioned, with respect to forfeitures incurred by persons unable to pay the same.”

Penalty on commanders of ships neglecting their duty.

Informers of such neglect to be paid 40l.

+ *Sec. 56.* By 28. Geo. 3. c. 38. s. 52. it is provided, “That in order to prevent collusive seizures and agreements, and fraudulent practices, whereby the penalties and forfeitures inflicted by this act may be evaded, it shall not be lawful for any person or persons, except an officer of his majesty’s customs, excise, or salt duties, who shall have cause to suspect that any sheep, wool, or any of the before-enumerated articles, and which are hereby prohibited from being exported, is or are carrying or conveying, contrary to the directions and true intent and meaning of this act, to examine or seize such sheep, wool, and other the said enumerated articles, other than together

No person, except an officer of the customs, &c. to seize sheep, &c. without a constable.

“ together and in company with a constable, or other officer
 “ of the peace, who are hereby required, on application
 “ being made to him or them, immediately to attend the
 “ person or persons applying for such assistance ; any thing
 “ herein-before contained to the contrary thereof in any
 “ wise notwithstanding.”

Constables,
 &c. neglect-
 ing their duty
 to forfeit 20l.

† *Stat.* 57. By 28. Geo. 3. c. 38. s. 53. it is further en-
 acted, “ That if any constable or other officer of the
 “ peace, or if any officer of his majesty’s customs, excise, or
 “ salt duties, upon application being made to him for
 “ that purpose, shall neglect or refuse to attend any per-
 “ son or persons who shall make such application, or shall
 “ neglect his duty in the premises, every such constable, or
 “ other officer of the peace, and officer of his majesty’s
 “ customs, excise, or salt duties, shall forfeit and pay for
 “ every such offence the sum of twenty pounds, one
 “ moiety whereof, when recovered, and after deducting the
 “ costs and charges of recovering the same, shall go to the
 “ person or persons suing for the same, and the other
 “ moiety thereof to the use of the poor of the parish or place
 “ where the offence shall have been committed : provided
 “ always, that nothing in this act contained shall extend, or
 “ be construed to extend, to take away the power hereby
 “ given to the commanders and officers of his majesty’s ships
 “ of war, or armed sloops, to take and seize any ship, vessel,
 “ or boat, having therein any sheep, wool, or other the said
 “ enumerated articles, the master or commander whereof
 “ shall not produce any such cocquet or warrant as afore-
 “ said.”

Nothing in
 this act to take
 away the
 power given
 to command-
 ers of king’s
 ships to seize
 vessels, &c.

All persons
 acting under
 the authority
 of the com-
 missioners of
 customs, &c.
 to be deemed
 their officers.

† *Stat.* 58. By 28. Geo. 3. c. 38. s. 54. “ And to prevent
 any dispute relating to the authority of any person or persons
 acting as an officer or as officers of the customs, excise, or salt
 duties in this kingdom, for putting in execution this act,”
 it is further enacted, “ That every person who, by deputation,
 “ commission, or other instrument, under the hands and
 “ seals of the commissioners of the customs, excise, or salt
 “ duties in this kingdom, or the isles aforesaid respectively,
 “ shall be appointed to act as an officer or servant under
 “ them for putting this act in execution, shall be esteemed
 “ an officer of the customs, excise, or salt duties respectively,
 “ to all intents and purposes whatsoever.”

Persons mak-
 ing collusive
 seizures, &c.
 to be subject
 to the like pe-
 nalties as ex-
 porters of
 wool ;

† *Stat.* 59. By 28. Geo. 3. c. 38. s. 55. it is further en-
 acted, “ That if any officer of the revenue, or other person or
 “ persons, shall, directly or indirectly, make any collusive
 “ seizure or information of any of the said articles hereby
 “ prohibited from being exported, or any fraudulent or col-
 “ lusive

" lusive agreement whatsoever, whereby the owner or
 " claimer thereof, their agents or servants, or any offender or
 " offenders against this act, may avoid the forfeitures,
 " punishments, and penalties, or any part thereof, incurred
 " or inflicted by this act, he, she, and they shall, upon con-
 " viction, be subject to the like penalties as are herein-
 " before directed to be incurred by the exporters of wool;
 " and every such information and seizure, and all the pro-
 " ceedings thereupon had, shall be and are hereby declared
 " to be for the benefit only of the person or persons (not
 " being an accomplice or accomplices) who shall first dis-
 " cover such collusive information and seizure: provided
 " nevertheless, That any person whatsoever, concerned in
 " any such collusive or fraudulent seizure or agreement,
 " who shall first discover such his offence to the com-
 " missioners of the customs for the time being, shall be
 " clearly acquitted and discharged thereof, provided he
 " makes such discovery within the space of three months
 " after the offence shall have been committed, and so as
 " any one or more of his accomplices therein be convicted
 " thereof; and if such person first making such discovery
 " as aforesaid, within the time aforesaid, be not an officer
 " of his majesty's revenue, or owner of the goods, he or she
 " shall, as a further encouragement for making such dis-
 " covery, have and receive, to his and her own use and
 " benefit, the sum of forty pounds, the same to be paid by
 " the commissioners of the customs on the conviction or
 " convictions of such offender or offenders."

and the sei-
 zures, &c. to
 be to the per-
 son discover-
 ing the col-
 lusion.

Any person
 concerned in
 such collusion,
 making the
 first discovery
 thereof, to be
 acquitted;

and if not a
 revenue offi-
 cer or owner
 of the goods,
 to have 40l.

+ *Stat. 60.* By 28. Geo. 3. c. 38. f. 56. for the more ef-
 fectual putting this act in execution, it is further enacted,
 " That if any person or persons whosoever, putting this
 " act in execution, shall be hindered, opposed, obstructed,
 " molested, wounded, or beaten, in seizing or attempting to
 " seize any sheep, wool, woollens, woollstocks, mortlings,
 " shortlings, or any other species of goods before enume-
 " rated, by any person or persons whomsoever, either in
 " the day or night, by land or water, which were intended
 " to be exported, or which were carrying on board any ship
 " or vessel contrary to this act, the person or persons who
 " shall so hinder, oppose, obstruct, molest, wound, or beat,
 " any such person or persons in the making, or attempting
 " to make, such seizures as aforesaid, and also all and every
 " other person or persons whatsoever, being armed with
 " offensive arms or weapons, or wearing any vizard, mask,
 " or other disguise, who shall rescue, or attempt to rescue,
 " any sheep, wool, or other the goods aforesaid, which shall
 " have been seized according to the directions of this act,
 " every such person or persons that shall be convicted of
 " any

Persons op-
 posing any
 one in the
 execution of
 this act to be
 transported.

“ any of the said offences shall, by order of the court before
 “ whom such offender or offenders shall be convicted, be
 “ transported to some place beyond the seas for such term
 “ as such court shall think fit, not exceeding seven years ;
 “ and if any such offender or offenders shall return into
 “ *Great Britain* before the expiration of the time for which
 “ he, she, or they shall be so transported, contrary to the
 “ intent and meaning hereof, he, she, or they, so returning,
 “ and being duly convicted thereof, shall suffer as felons,
 “ and have execution awarded against them, as persons at-
 “ tainted of felony, without benefit of clergy.”

Persons offer-
 ing bribes to
 connive at any
 evasion of this
 act to forfeit
 300*l*.

+ *Sec.* 61. By 28. Geo. 3. c. 38. s. 57. it is further enacted,
 “ That if any person or persons whosoever shall offer or
 “ promise to give any bribe, or recompence or reward what-
 “ soever, to any officer or officers of the customs, excise,
 “ or salt duties, or to any person or persons whomsoever,
 “ to connive at, or permit the exportation or the conceal-
 “ ment of any sheep, wool, or other the articles hereby
 “ prohibited from being exported, or the removing thereof,
 “ contrary to this act, or to conceal or connive at any other
 “ act whereby any of the provisions hereby made may be
 “ evaded or broken, every such person or persons so offend-
 “ ing shall, for every such offence (whether the same offer,
 “ proposal, or promise, be accepted or performed or not),
 “ forfeit and pay the sum of three hundred pounds, to be
 “ recovered and applied to the use of him, her, or them,
 “ who shall inform or sue for the same, by action of debt,
 “ bill, plaint, or information, in any of his majesty's courts
 “ of record at *Westminster*, wherein no essoin, protection,
 “ or wager of law, or more than one imparlance, shall be
 “ allowed.”

Officers of the
 excise, &c.
 neglecting
 their duty, to
 suffer the same
 punishment as
 exporters of
 wool.

+ *Sec.* 62. By 28. Geo. 3. c. 38. s. 58. it is further enacted,
 “ That every officer of his majesty's excise, customs, or salt
 “ duties, neglecting the duty by this act required, or com-
 “ pounding for any ship, vessel, sheep, wool, or other the
 “ articles herein-before mentioned, and which are by this
 “ act directed to be forfeited, shall be deemed aiders and
 “ abettors in the exportation of sheep, wool, and other the
 “ articles aforesaid, which are hereby prohibited from being
 “ exported, and suffer the punishment herein enacted against
 “ the exporters thereof.”

Bonds not to
 be chargeable
 with stamp
 duties.

+ *Sec.* 63. By 28. Geo. 3. c. 38. s. 59. it is provided,
 “ That all bonds taken, or to be taken, in pursuance of this
 “ act, shall not be chargeable with any of the duties upon
 “ stamped vellum, parchment, or paper, any law or statute
 “ made, or to be made, to the contrary notwithstanding.”

+ *Sec.*

† *Sect. 64.* By 28. Geo. 3. c. 38. f. 60. it is further enacted, In all prosecutions the proof to lie upon the defendant.
 “ That in all questions, prosecutions, suits, and informations, which shall happen to arise or be commenced, brought, sued, or prosecuted, between or against any person or persons for any thing done or committed, or neglected to have been done, contrary to the directions, true intent, and meaning of this act, touching or concerning the sheep, wool, or other articles hereby prohibited from being exported, it shall not be necessary for the prosecutor, or person or persons commencing, bringing, or prosecuting any such suit, indictment, or information, nor shall he, she, or they be obliged or required, upon any hearing or trial thereof, to prove that such sheep was or were of the breed of this kingdom, or that such wool was of the growth of this kingdom, but that, without any such proof, upon every such hearing and trial, it shall be held, deemed, and taken, that such sheep was or were of the breed of this kingdom, and such wool of the growth of this kingdom, unless the contrary shall be proved by or on the part of the person or persons who shall happen to be defendant or defendants in or upon any such hearing or trial, any law or usage to the contrary notwithstanding.”

† *Sect. 65.* By 28. Geo. 3. c. 38. f. 61. it is further enacted, Prosecutions may be commenced in any court of record at Westminster, &c.
 “ That all actions, suits, prosecutions, and informations, to be had and commenced upon this, or upon the said recited act of the ninth and tenth year of his late majesty King *William the Third*, for or in respect of any offence or offences done or committed against this or the said recited act, or for or in respect of any penalty or forfeiture in or by the said acts, or either of them, imposed or inflicted, shall and may be entered and prosecuted (except where it is in this act otherwise directed) in any of his majesty's courts of record at *Westminster*, or in the court of exchequer in *Scotland*, or in any court of *oyer* and *terminer*, great session, or gaol delivery, or at the quarter sessions of the peace, or before any two justices of the peace for any county, city, or place in this kingdom, in a summary way, at the election of the seizer or informer, wherein no essoin, protection, or wager of law, shall be allowed, or any more than one imparlance.”

† *Sect. 66.* By 28. Geo. 3. c. 38. f. 62. it is provided, No prosecution to be commenced upon in a summary way for more than 200l.
 “ That no prosecution or information shall be had, commenced, brought, or proceeded upon, before any two such justices of the peace in a summary way, where the seizure, than 200l.”

“ seizure, penalty, or forfeiture then claimed shall exceed;
 “ in the whole, the sum of two hundred pounds.”

Justices to order seizures to be publicly sold, and penalties to be levied by distress.

+ *Seff.* 67. By 28. Geo. 3. c. 38. s. 63. it is further enacted;
 “ That the said justices who shall be assembled at any such
 “ general quarter sessions of the peace, and also such afore-
 “ said two justices, shall, and they are hereby empowered
 “ and required to order and direct all such ships, vessels,
 “ goods, carriages, and cattle, as shall be by them declared
 “ to be forfeited, and which shall have been seized by
 “ virtue of this or the said recited act, to be publicly sold
 “ to the highest bidder, at such time and place as they shall
 “ think proper and direct; and also, by their order or war-
 “ rant, to levy all and every the penalties and forfeitures
 “ which shall have been incurred by any offender or of-
 “ fenders against this or the said recited act, and also all
 “ such costs as shall have been awarded upon any appeal
 “ touching the same, by distress and sale of the goods and
 “ chattels of such offender or offenders, rendering the over-
 “ plus (if any) to the owner and owners of such goods
 “ and chattels, after deducting the reasonable charges of
 “ such distress and sale.”

How penalties are to be applied.

+ *Seff.* 68. By 28. Geo. 3. c. 38. s. 64. it is further enacted,
 “ That one clear moiety of the respective seizures, penalties,
 “ and forfeitures (except the penalties of the bonds) by
 “ this act directed to be inflicted upon offenders against
 “ the same (except such as are by this act otherwise directed
 “ and applied) shall, when recovered, be paid and applied
 “ to such person or persons who shall give such infor-
 “ mation to any officer of his majesty's customs, excise,
 “ or salt duties, as may be the means of recovering the
 “ same; and that after deducting the expences of recovering
 “ such penalties, the remainder of the other moiety shall
 “ be paid to the officer or officers assisting in making any
 “ such seizures; but that in case any officer or officers of
 “ his majesty's customs, excise, or salt duties, shall make
 “ any of the seizures herein-before directed without infor-
 “ mation, then, after deducting the expences of recovery
 “ as aforesaid, the remainder of such produce shall be paid
 “ to the officer or officers seizing the same.”

Persons exporting sheep, &c. to be carried before a justice, who may commit them to gaol, &c.

+ *Seff.* 69. By 28. Geo. 3. c. 38. s. 65. it is further enacted,
 “ That it shall and may be lawful to and for any officer
 “ or officers of his majesty's customs, excise, or salt duties,
 “ constables, and other officer or officers of the peace, and
 “ for all persons acting in their or any of their aid or as-
 “ sistance, to stop, arrest, and detain all and every the per-
 “ son and persons who shall be found actually exporting,
 “ or

“ or attempting to export, any sheep, wool, or any other
 “ the said herein-before enumerated articles, or who shall
 “ be aiding, abetting, or assisting in the exporting, or at-
 “ tempting to export the same, or any of them, and him,
 “ her, and them, to carry and convey before one or more
 “ of his majesty’s justices of the peace near to the place
 “ where the offence shall be committed or done, and the
 “ justice or justices shall, if he or they see cause, commit
 “ the person or persons so brought before him or them to
 “ the county gaol or house of correction until the next
 “ general quarter sessions of the peace to be holden for
 “ the same county, riding, division, or place, there to be
 “ tried and dealt with as by this act is directed; and the
 “ justices at such sessions are hereby authorized and re-
 “ quired to examine, hear, try, and determine all and every
 “ such offence and offences, and, upon conviction of the
 “ offender or offenders, to punish him, her, or them in
 “ manner herein-before mentioned.”

† *Secl. 70.* By 28. Geo. 3. c. 38. s. 66. it is further enacted, Persons con-
veying offend-
ers before
justices to en-
ter into re-
cognizances to
prosecute.
 “ That the officer or officers, person or persons who shall
 “ convey any offender arrested by the authority of this act
 “ before any justice of the peace as aforesaid, shall, in case
 “ such offender shall be committed to prison as aforesaid,
 “ enter into recognizance to his said majesty, his heirs and
 “ successors, before such justice, in the sum of forty pounds,
 “ conditioned to appear at such general quarter sessions
 “ of the peace, and to prosecute the person or persons so
 “ committed.”

† *Secl. 71.* By 28. Geo. 3. c. 38. s. 67. it is further enacted, Where goods
are insufficient
to answer pe-
cuniary pe-
nalties, the
offender may
be committed.
 “ That if it shall appear to the satisfaction of the justices
 “ before whom any offender or offenders shall be convicted
 “ of any of the offences herein-before mentioned, for which
 “ only a pecuniary penalty is hereby imposed, either by the
 “ confession of the party convicted, or by the testimony of
 “ a credible witness, that such offender or offenders have
 “ not nor hath goods or chattels sufficient to answer the
 “ penalty or penalties against him, her, or them recovered,
 “ then, without giving any warrant for the purpose, or if
 “ such penalty or penalties cannot be wholly levied by vir-
 “ tue of the warrant or warrants which shall be for that
 “ purpose issued, the justices who shall have convicted such
 “ offender or offenders, or any other two justices of the
 “ same county, division, borough, town, or place, upon
 “ proof thereof, shall and lawfully may commit every such
 “ offender or offenders to the common gaol or house of
 “ correction of the county or place in or for which such
 “ justice or justices shall then act, there to remain, without
 “ bail

“ bail or mainprize, for any time not exceeding three calendar months, unless the whole of such penalty or penalties shall be sooner paid.”

Justices may accept security for pecuniary penalties.

† *Stat. 72.* By 28. Geo. 3. c. 38. s. 68. it is provided, “ That if any offender ordered to be committed to prison under or by virtue of this act, for any offence for which a pecuniary penalty alone is hereby imposed, shall, before his actual commitment to prison, procure security to be given by two sufficient sureties, to the satisfaction of the justices before whom he shall have been convicted, for payment of the penalty or penalties by him incurred, with the charges incident to his conviction, within the space of fourteen days, exclusive of the day of conviction, then and in such case it shall and may be lawful for such justices to accept such security; and upon non-payment thereof, at the time stipulated for that purpose, it shall and may be lawful to and for the same justices, or any other two justices of the peace for the same county, division, or place, to cause the party convicted, and his sureties, to be apprehended by warrant or warrants under his or their hands and seals, and them, and each and every of them, to commit to the common gaol or house of correction of the county, division, or place in or for which such justices shall act, for such space of time as the party convicted was subject and liable to have been imprisoned, in case no such security had been given, unless such penalty and charges shall be sooner paid.”

Appeals from justices may be made to the quarter-sessions, on two sureties entering into recognizances;

† *Stat. 73.* By 28. Geo. 3. c. 38. s. 69. it is also provided, “ That if any person or persons who shall be convicted of any of the offences in this act herein-before mentioned, shall think himself or themselves aggrieved by the judgment or determination of such justices of the peace, upon any complaint or information brought or made before them, it shall and may be lawful to and for any such person or persons to appeal to the next general or quarter sessions of the peace to be held for the county, division, or place in or for which such justice or justices shall have acted, such person or persons giving, and being hereby required to give, within fourteen days then next after such conviction, notice in writing to the informer or informers of such appeal, and shall and do at the time of making such appeal, with two sufficient sureties, enter into recognizances before the same justice or justices of the peace, to appear and prosecute such appeal at the said general or quarter sessions, and abide by the order or determination of the same court, and to pay the costs and charges thereby awarded against such person or persons “ (if

“(if any); and every such appeal shall, by the said court
“of general or quarter sessions, be examined, and the cir-
“cumstances of the case fully inquired into, and the matter
“heard and determined; and in case such judgment, deter-
“mination, or conviction, so appealed against, shall be
“affirmed, the party so appealing shall pay unto the in-
“former or informers double costs, to be ascertained by the
“order of the same court.”

† Sect. 74. By 28. Geo. 3. c. 38. f. 70. it is also provided, and if the ap-
“That in case the person or persons so appealing shall pay ^{pellant pay}
“the penalty under any such conviction as aforesaid into ^{the penalty, or}
“the hands of the said justices by way of deposit, or shall ^{be in prison,}
“be committed to prison, such person or persons shall and ^{without sure-}
“may appeal to the said general or quarter sessions, on his, or ^{ties.}
“their entering (without sureties) into such recognizances
“as herein-before mentioned, and remaining in prison in
“the mean time, or depositing such penalty into the hands
“of the said justices, there to remain until the merits of
“the said appeal shall be heard and determined.”

† Sect. 75. By 28. Geo. 3. c. 38. f. 71. it is further enacted, Justices may
“That every information to be made under this act shall be ^{summon wit-}
“made upon oath; and that it shall and may be lawful to ^{nesses.}
“and for the justice or justices before whom any complaint
“or information shall have been so made, to summon be-
“fore them, at the instance of either party, any person who
“shall, in their judgment, appear to be a necessary witness
“for either or any of the said parties upon the said com-
“plaint or information, to appear before him or them, at a
“time and place to be specified in the summons; and the
“person so summoned shall appear at the time and place
“specified, and submit in all things to be examined as a
“witness in the premises.”

† Sect. 76. By 28. Geo. 3. c. 38. f. 72. it is further enacted, Penalty on
“That in case any person or persons shall receive or take ^{receiving}
“any greater fees for any sufferance, licence, or certificate, ^{more than the}
“or other matter herein directed, than the sum or fee ^{limited fees.}
“herein for that purpose limited, the person or persons
“offending therein shall forfeit and pay to the party ag-
“grieved, the sum of five shillings for every one penny
“which shall be taken over and above the fee hereby al-
“lowed to be taken, and so on after that proportion.”

† Sect. 77. By 28. Geo. 3. c. 38. f. 73. it is further enacted, Persons pro-
“That in case any person shall be prosecuted in any of his ^{secuted to}
“majesty's courts of record at *Westminster* for any penalty ^{give bail,}
“incurred by this act, a *capias* shall and may issue, the
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“ first process specifying the sum of the penalty sued for,
 “ and the person or persons so sued shall be obliged to give
 “ good and sufficient bail and security, by natural-born
 “ subjects or denizens, to the officer serving or executing
 “ such process against him or them, to appear in the court
 “ out of which such *capias* shall issue, at the day of the
 “ return of such writ, to answer such suit or prosecution,
 “ and likewise shall, at the time of such appearance, give
 “ sufficient bail or security, by such persons as aforesaid, in
 “ the said court, to answer and pay the forfeitures and
 “ penalties incurred for such offence or offences, in case he
 “ or they shall be convicted thereof, or to yield his or their
 “ bodies to prison.”

Actions to be tried by a jury of freeholders of a different county from that wherein the fact was committed. + *Sec.* 78. By 28. Geo. 3. c. 38. s. 74. for the better and more impartial trials of all actions and informations which shall be commenced or prosecuted by virtue of this act, it is further enacted, “ That such actions and informations shall
 “ be tried in any of his majesty’s courts of record, by a
 “ jury of good and lawful freeholders, to be summoned out
 “ of any other county than that wherein the fact shall be
 “ committed.”

If persons imprisoned for want of bail refuse to plead to informations, for one Term, judgment to be entered against them. + *Sec.* 79. By 28. Geo. 3. c. 38. s. 75. it is further enacted,
 “ That if any person or persons shall be in prison for want
 “ of sufficient bail for any of the pecuniary penalties herein-
 “ before inflicted, and shall refuse to appear or plead to a
 “ declaration or information to be delivered to such person
 “ or persons, or to the gaoler, or keeper, or turnkey of the
 “ prison, at the said prison, for any of the aforesaid penali-
 “ ties, for the space of one Term, judgment shall be entered
 “ against him by default.”

Where there have not been made any seizure out of which to reward prosecutors, the commissioners of the revenue to recompense them as herein mentioned. + *Sec.* 80. By 28. Geo. 3. c. 38. s. 76. it is further enacted,
 “ That if any person or persons, offender or offenders, shall
 “ be convicted for any of the offences specified in this act,
 “ and there shall happen to have been no seizure whereby
 “ the informer or prosecutor can be rewarded, then, and in
 “ such case, it shall and may be lawful for the respective
 “ commissioners of the customs, excise, or salt duties, or
 “ other his majesty’s revenue, and they are hereby re-
 “ spectively required to cause one shilling per pound weight
 “ for all such of the said articles for which such offender or
 “ offenders shall be convicted, or the sum of forty pounds
 “ in case the quantity cannot be known, to be paid by the
 “ receiver-general of the revenue under the management
 “ of the respective commissioners, out of any public
 “ money in his hands; and the money paid by any re-
 “ ceiver-general, cashier, or other officer as aforesaid, shall
 “ be

“ be accepted of and allowed in his account as for
 “ much money paid to his majesty, and every such officer
 “ is and shall be hereby discharged thereof accordingly;
 “ any law, custom, or usage, to the contrary notwithstanding.”

† *Stat.* 81. By 28. Geo. 3. c. 28. s. 77. it is provided, Prosecutions to be commenced in three years.
 “ That no person or persons whatsoever shall at any time
 “ hereafter be liable to be prosecuted for any offence, act,
 “ matter, or thing done or committed contrary to this act,
 “ unless such prosecution shall be commenced within the
 “ space of three years next ensuing the offence committed.”

† *Stat.* 82. By 28. Geo. 3. c. 38. s. 78. it is further enacted, The first three persons concerned in exporting sheep, &c. not being the owners, who shall inform thereof to be exempted from penalties;
 “ That the better to encourage persons to discover the ex-
 “ porters of sheep, wool, or other the articles before enu-
 “ merated, and which are hereby prohibited from being
 “ exported, the first three persons who shall have been
 “ aiding, abetting, or assisting in carrying out or exporting
 “ of sheep, wool, or any of the said articles, who shall give
 “ information thereof to any justice of the peace within
 “ this kingdom, whereby the punishment and penalties from
 “ appointed by this act may be inflicted and recovered, the
 “ party or parties so discovering (not being owner or part
 “ owner of the said sheep, wool, or other the articles as
 “ aforesaid) shall not suffer any of the said penalties or
 “ punishments herein-before mentioned: Provided always,
 “ That if any owner of any ship or vessel, or any master, and also the owner, &c. of the ship, upon the conditions herein mentioned.
 “ commander, or mariner, or person aiding or assisting in
 “ loading any ship, vessel, or boat, knowing of such ex-
 “ portation of sheep, wool, or of any of the articles before
 “ enumerated, and which are hereby prohibited from being
 “ exported, shall, within three months next after the know-
 “ ledge thereof, or after his return into the kingdom of
 “ Great Britain, give the first information thereof before
 “ any of the barons of the court of exchequer for the time
 “ being, or before the head-officer of any port where he
 “ shall first arrive, or before any justice or justices of the
 “ peace, upon his or their oath, of the number and quan-
 “ tity of the said articles so carried, conveyed, and trans-
 “ ported, and by whom, where, and in what ship or vessel,
 “ and shall enter into recognizance to his said majesty, his
 “ heirs and successors, with two sufficient sureties, before
 “ any justice of the peace, in the sum of forty pounds
 “ each, personally to appear and give evidence of the same,
 “ then such owner and owners, master, commander, ma-
 “ riner and mariners, or other person or persons so aiding
 “ or assisting therein, shall not be liable to any of the
 “ penalties or forfeitures in this act contained or enacted

“ for the offence aforesaid, but shall be, and is and are
 “ hereby enabled to recover and receive such benefit and
 “ advantage as is appointed to be received and allowed by
 “ this act on conviction of such offenders.”

In actions brought by persons claiming the benefit of this act against officers, &c. for any thing done in regard to matters hereby discharged, they may plead the general issue.

† *Sec. 83.* By 28. Geo. 3. c. 38. f. 89. it is further enacted,
 “ That if any person or persons who shall claim the bene-
 “ fit of this act, shall, after such claim, bring or commence,
 “ or cause to be brought or commenced, any action, plaint,
 “ information, or other prosecution whatsoever, against
 “ any officer of his majesty’s navy, or in the service of the
 “ customs, excise, or salt, or other person who shall have
 “ aided or assisted any such officer, for or concerning any
 “ act, matter or thing, done or committed by them, or any
 “ of them, on occasion of, or for or by reason or means of
 “ any of the offences, frauds, misdemeanors, or other mat-
 “ ters or things intended to be released and discharged by
 “ this act, such claim is and shall be deemed to be an ab-
 “ solute discharge and release to every such officer, or other
 “ person, of and from all and every such actions, suits, and
 “ prosecutions; and such officer and other person may
 “ plead the general issue, and give the special matter in evi-
 “ dence; and the said officer or other person shall recover
 “ his costs of suit against the person or persons so bringing
 “ or commencing such action or prosecution.”

Act not to extend to the discharge of any seizure of wool, &c. or any prosecution now depending, &c. in respect to such parts of fines as belong to the informer;

† *Sec. 84.* By 28. Geo. 3. c. 38. f. 90. it is provided,
 “ That nothing in this act contained shall extend, or be
 “ construed to extend, to discharge or release any seizures of
 “ wool, or any other the said herein-before enumerated arti-
 “ cles, or of any ships, vessels, boats, horses, waggons,
 “ carts, carriages, or other thing whatsoever, or any prose-
 “ cution now depending for the forfeiture of such wool, or
 “ any other the said herein-before enumerated articles,
 “ ships, vessels, boats, horses, waggons, carts, carriages, or
 “ other thing, under any act or acts of parliament now in
 “ force against the exportation of live sheep, wool, or any
 “ other the said herein-before enumerated articles, nor to
 “ acquit, release, or discharge any judgment or judgments,
 “ where the monies or other things recovered have been
 “ actually levied, or the body or bodies of the offender or
 “ offenders now in custody, or which have been taken in
 “ execution before the making of this act, nor to acquit,
 “ release, or discharge any information which has been
 “ already entered, or any action or suit which has been
 “ already commenced or brought against any person or
 “ persons for the recovery of any penalty, fine, or for-
 “ feiture, incurred by any offence committed by him or
 “ them against any such act or acts of parliament, verdict
 “ or

“ or verdicts obtained, or judgment or judgments recovered
 “ thereon, in respect to such part thereof as belongs to or
 “ has been usually allowed and paid to the officer of his
 “ majesty’s navy, or in the service of the customs, excise, or
 “ salt, (at whose instance the prosecution is or was carried
 “ on), according to the mode in which such suit or suits
 “ hath or have been commenced and carried on; but such ^{but such suits}
 “ information, suit, verdict or verdicts, or judgment or ^{may be pro-}
 “ judgments, shall and may be proceeded upon as originally ^{ceeded on.}
 “ commenced, entered, and proceeded upon, without any
 “ alteration in the proceedings upon such information,
 “ suit, verdict or verdicts, judgment or judgments, for the
 “ recovery in due course of law of such part of the penalty
 “ or forfeiture incurred, as belongs to or has been usually
 “ allowed and paid to such officer of his majesty’s navy, or
 “ in the service of the customs, excise, or salt, at whose in-
 “ stance the prosecution is or was carried on, according to
 “ the mode in which such suit or suits hath or have been
 “ carried on.”

† *Sec. 85.* By 28. Geo. 3. c. 38. s. 91. it is further enacted, ^{Limitation of}
 “ That in case any action, suit, or information shall be ^{actions.}
 “ commenced, brought, and prosecuted on account of the
 “ seizure of any ship, vessel, or boat, waggon, cart, carriage,
 “ horse, or other beast of burthen, or of any sheep, wool,
 “ woollens, woollstocks, mortlings, shortlings, worsted, hay
 “ or woollen yarn, cruels, or wool slightly manufactured,
 “ or mattrasses or beds stuffed with combed wool, or wool
 “ fit for combing or carding, fullers earth, fulling clay,
 “ or tobacco-pipe clay, as illegally carried or exported,
 “ or intended or attempted to be exported, or for any mat-
 “ ter, cause, or thing done, committed, or executed by
 “ virtue of this act, or any clause or article herein con-
 “ tained, such action shall be commenced within six months
 “ after the fact committed, and not afterwards, and shall
 “ be laid in the proper county where the fact was done or
 “ committed; and the person or persons so sued may file
 “ common bail, or enter a common appearance, and plead
 “ the general issue, not guilty, and may give this act, and ^{General issue.}
 “ the special matter, in evidence at the trial, and that the
 “ same was done in pursuance and by the authority of this
 “ act: and if upon the trial it shall appear to be so done,
 “ the jury shall find for the defendant or defendants; and
 “ in such case, or if the said plaintiff or plaintiffs, or pro-
 “ secutor, shall become nonsuit, or suffer discontinuance,
 “ or if upon demurrer judgment be given against the plain-
 “ tiff, the defendant or defendants in any such case shall
 “ recover treble costs, which he or they shall sustain by his ^{Treble costs.}
 “ or their defence to such action or suit; and that in case
 “ any

If in any action for a seizure, a verdict be found for the claimer, he shall not be entitled to costs if there was a probable cause for making it, &c.

“ any information shall be commenced and brought to trial on account of any seizure which shall be made under or by virtue of this act, wherein a verdict shall be found for the claimer thereof, and it shall appear to the judge or court before whom the same shall be tried that there was a probable cause of seizure, the judge or court before whom the said information shall be tried, shall certify on the record that there was a probable cause for the prosecutor's making such seizure, in such case the defendant shall not be entitled to any costs of suit whatever, nor shall the person or persons who made any such seizure be liable to any action, indictment, or other suit or prosecution, on account thereof; and that in case any action, indictment, or other prosecution, shall be commenced and brought to trial against any person or persons whatsoever, which shall be made under or by virtue of this act, wherein a verdict shall be given against the defendant or defendants, if the court or judge before whom such action or prosecution shall be tried shall certify on the said record that there was a probable cause for such seizure, then the plaintiff, besides the ship or goods which shall happen to be seized, or the value thereof, shall not be entitled to above two-pence damages, nor to any costs of suit, nor shall the defendant in such prosecution be fined above one shilling.”

Dyer v. Hainsworth, 3. Term Rep. 611.

+ Sect. 86. It hath been adjudged, that the 28. Geo. 3. c. 38. f. 74. which enacts, “ That any information shall be tried by a jury to be summoned out of another county than that where the fact was committed,” means that the trial shall be had in another county.

Dyer v. Hainsworth, 3. Term Rep. 611.

+ Sect. 87. It is also decided, upon the said statute 28. Geo. 3. c. 38. f. 31. that the court out of which the record issues is to give judgment, and not the court of *nisi prius* where it is tried.

3. Term Rep. 611.

+ Sect. 88. It is also decided, upon the 28. Geo. 3. c. 38. f. 31. that it is an offence to press together yarn made of wool.

3. Term Rep. 611.

+ Sect. 89. It also seems, that a declaration or information on this statute need not aver that the *pretended manufacture* was in such a state as might be reduced to and used as wool again.

CHAPTER THE FORTY-EIGHTH

CONTINUED.

OF

S M U G G L I N G.

† **SMUGGLING** consists in bringing on shore, or in carrying from the shore, goods, wares, or merchandize, for which the duty has not been paid, or of goods of which the importation or exportation is prohibited. This offence is productive of various mischiefs to society. The public revenue is thereby lessened; the fair trader is injured; and the nation impoverished; rival and perhaps hostile States are thereby enriched; and the persons guilty thereof, being hardened by a course of disobedience to and defiance of law, behave so abandoned and daring as not to hesitate at being guilty of the greatest offences. It is therefore restrained by a great variety of statutes (*a*), which inflict pecuniary penalties, and seizure of the goods, for clandestine smuggling; and affix the guilt of felony, with transportation for seven years, upon more open daring and avowed practices.

4. Comm. 155.
4. Bac. Ab.
523. 543.
1. Comm. 317.
Beccar. c. 33.
8. Mod. 5.
(a) 5. Geo. 1.
c. 11.
6. Geo. 1. c. 23.
9. Geo. 2. c. 34.
13. & 14. Car.
2. c. 11.
8. Geo. 1. c. 18.

I shall consider,

1. Of the offences of smuggling, and resisting revenue-officers.

2. In what cases smugglers may be required, by proclamation, to surrender themselves.

3. In what county the offence of smuggling may be tried.

As to THE FIRST POINT, *viz.* Of the offences of smuggling, and resisting revenue-officers in the execution of their duty.

† *Stat.* 2. By 8. Geo. 1. c. 18. s. 6. "All and every person and persons who shall be found passing (knowingly and willingly) with any foreign goods or commodities landed from any ship or vessel, without the due entry and being more than five, and resisting officers, &c. to be transported.

“ payment of the duties by law charged thereon, in his, her, or their custody, from any of the coasts of this kingdom, or within the space of twenty miles of any of the said coasts, and shall be more than five persons in company, or shall carry any offensive arms or weapons, or wear any vizard, mask, or other disguise, when passing with such goods or commodities as aforesaid, or shall forcibly hinder or resist any of the officers of the customs or excise in the seizing or securing any sorts or kinds of run goods or commodities, shall be deemed and taken to be runners of foreign goods and commodities within the meaning of this present act, and (being convicted of or for any of the said offences, for which he, she, or they so convicted are by this present act declared to be deemed and taken to be runners of foreign goods and commodities) shall be adjudged guilty of felony, and shall, for such his, her, or their offence, be transported as a felon to some or one of his majesty's colonies or plantations in *America*, there to remain for the space of seven years.”

Any justice, on information upon oath, that three or more persons are assembled together, armed, &c. may grant a warrant for apprehending them;

† *Stat. 3.* By 9. Geo. 2. c. 35. s. 10. IT IS RECITED, “ That divers dissolute and disorderly persons frequently appear in great gangs near the sea-coasts and the shores of navigable rivers, and in and about the towns and villages adjacent thereto, and in divers other parts of this kingdom, carrying fire-arms or other offensive weapons, to the great terror of his majesty's subjects, and the hindrance of the civil officers, and the officers of the customs and excise, in the execution and discharge of their duty, and during their abode there commit great spoil and devastation to the estates therabouts, in order to be aiding and assisting in the clandestine running, landings, or carrying away prohibited and uncustomed goods, and to rescue the same after seizure from the officers of the customs or excise, and to watch for proper opportunities for that purpose: and that several officers of the revenue and others their assistants have been wounded, maimed, and some of them murdered in the execution of their office, and great quantities of run goods have been rescued after seizure, and sheriffs and other civil officers have been forcibly hindered from the execution of process.” AND THEREFORE ENACTED, “ That upon information to be given upon oath before any one or more of his majesty's justices of the peace in any county, city, or liberty whatsoever, that any persons to the number of three or more are or have been assembled for any of the purposes aforesaid, and are or have been armed with fire-arms or other offensive arms or weapons; such justice or justices of the peace shall and may grant his or their warrant to the constables, headboroughs, and other peace-officers “ what-

“ whatsoever, or any of them, requiring such officer and officers respectively, to take to his and their assistance as many of his majesty’s subjects as may be thought necessary for the apprehending all and every person and persons against whom such information shall be given as aforesaid, and such justice or justices of the peace shall and may (if upon due examination he or they find cause) commit all and every or any of the said person and persons to the next county gaol, there to remain without bail or mainprize until he, she, or they shall be discharged by due course of law; and all and every such person and persons, upon due proof of his, her, or their being assembled and armed as aforesaid, in order to be aiding and assisting in the clandestine running, landing, rescuing, or carrying away prohibited or uncustomed goods, and upon conviction of and for such offence, shall be adjudged guilty of felony, and shall be transported as a felon or felons to some or one of his majesty’s colonies or plantations in *America*; there to remain for the space of seven years.”

† *Stat.* 4. By 9. Geo. 2. c. 35. f. 28. IT IS RECITED, Persons forcibly obstruct or hinder any officer of the customs or excise, being on board any ship, boat, or vessel, within the limits of any of the ports of this kingdom, are liable by law, hath proved insufficient:” and therefore IT IS ENACTED, That if any officer or officers of the customs or excise, being on board any ship, boat or vessel, within the limits of any of the ports of this kingdom, be forcibly hindered, opposed, obstructed, wounded or beaten, in the due execution of his or their office or duty, by any person or persons whatsoever, either in the day or night, all and every person and persons so forcibly hindering, opposing, obstructing, wounding or beating the said officer or officers in the execution of his or their office, and all such as shall act in their aid or assistance, being convicted thereof, shall by order of the court before whom such offender or offenders shall be convicted, be transported to some of his majesty’s colonies and plantations in *America*, for such term as such court shall think fit, not exceeding seven years.”

† *Stat.* 5. By 11. Geo. 2. c. 26. f. 2. “ for laying a duty upon retailers of spirituous liquors, and for licensing the retailers thereof,” it is enacted, “ That if any persons to the number of five or more shall, in a tumultuous and riotous manner, assemble themselves to rescue any offender or offenders against the said first-mentioned act;”

“ act ; or to assault, beat, or wound any person or persons
 “ who shall have given, or be about to give, any informa-
 “ tion or evidence against, or shall have discovered or
 “ given evidence against, or be about to discover or give
 “ evidence against, seize, or bring to justice any person
 “ or persons offending against the said first-mentioned
 “ act ; that then all and every person or persons so assem-
 “ bling themselves, and their aiders and abettors, being
 “ thereof lawfully convicted, shall be, and be adjudged to
 “ be, guilty of felony ; and every such felon and felons
 “ shall be subject and liable to the like pains and penalties
 “ as in cases of felons ; and the courts by and before whom
 “ he, she, or they shall be convicted, shall have full power
 “ and authority of transporting such felon and felons for
 “ the space of seven years.”

Armed per-
 sons to the
 number of
 three, assem-
 bled to assist
 in the illegal
 exporting or
 running of
 goods, &c.
 or appearing
 in disguise
 with such
 goods, or who
 shall resist,
 &c. officers in
 the execution
 of their duty,
 are guilty of
 felony with-
 out benefit of
 clergy.

+ *Stat. 6.* By 19. Geo. 2. c. 34. IT IS RECITED,
 “ That divers dissolute persons have associated themselves,
 and entered into confederacies to support one another, and
 have appeared in great gangs in several parts of this king-
 dom, carrying fire-arms, or other offensive weapons ; and
 when so assembled, have been aiding and assisting in run-
 ning, landing, or carrying away prohibited or uncustom-
 ed goods, or goods liable to duties of excise, or in the il-
 legal relanding of any goods or merchandizes, which have
 been shipped or exported upon debenture or certificate, or
 in rescuing the same after seizure, or in obstructing the
 officers of the revenue in the execution of their office, to
 the great discouragement of the fair trader, and the loss of
 the public revenue ; And whereas several officers of the
 customs and excise, and their assistants, have been wound-
 ed, maimed, and some of them killed, when in the exe-
 cution of their office or otherwise, by the said dissolute
 persons so associated and assembled as aforesaid, to the
 great terror of his majesty’s peaceable subjects, in defiance
 of the laws, and to the utter subversion of all civil autho-
 rity and power whatsoever :” it is therefore ENACTED,
 “ That if any persons, to the number of three or more,
 “ armed with fire-arms or other offensive weapons, shall
 “ be assembled, in order to be aiding and assisting in the
 “ illegal exportation of wool or other goods prohibited
 “ to be exported, or the carrying of wool or other such
 “ goods, in order to such exportation, or in the running,
 “ landing, or carrying away prohibited or uncustomed
 “ goods, or goods liable to pay any duties, which have not
 “ been paid or secured ; or in the illegal relanding of any
 “ goods whatsoever, which have been shipped or export-
 “ ed upon debenture or certificate ; or in rescuing or tak-
 “ ing away the same, after seizure, from any officer or of-
 “ ficers

“ ficers of the customs or excise, or other his majesty’s
 “ revenue, or other person or persons employed by him
 “ or them, or assisting him or them, or from the place
 “ where they shall be lodged by him or them ; or in
 “ rescuing any person who shall be apprehended for any
 “ of the offences made felony by this or any other act,
 “ relating to the revenues of customs or excise ; or
 “ in preventing the apprehending any person who shall
 “ be guilty of any such offence ; or in case any persons to
 “ the number of three or more, so armed as aforesaid,
 “ shall be so aiding or assisting ; or if any person shall have
 “ his face blacked, or wear any vizard, mask, or other dis-
 “ guise, when passing with such goods, or shall forcibly
 “ hinder, obstruct, assault, oppose, or resist any of the
 “ officers of the customs or excise, or other his majesty’s
 “ revenue, in the seizing or securing any such goods ;
 “ or if any person or persons shall maim or danger-
 “ ously wound any officer of the customs or excise, or
 “ any other his majesty’s revenue, in his attempting to
 “ go on board any ship or vessel, within the limits of any
 “ of the ports of this kingdom ; or shoot at, maim, or
 “ dangerously wound him when on board such ship or
 “ vessel, and in the due execution of his office or duty,
 “ then every person so offending, being thereof lawfully
 “ convicted, shall be adjudged guilty of felony, and shall
 “ suffer death as in cases of felony without benefit of
 “ clergy ; and that all and every person and persons
 “ who shall at any time be convicted of any of the of-
 “ fences aforementioned, within that part of *Great Bri-*
 “ *tain* called *Scotland*, shall for every such offence in-
 “ cur and suffer the pains of death and confiscation of
 “ moveables.”

Upon this statute the following determinations have been made.

† *Seet. 7.* It seems agreed, that in order to bring an offender within the penalties of this act, there must be an assembling of three persons or more for the purpose of committing some or one of the offences described in the statute. Rex v. Spice,
Old Bailey
Dec. Session
1785. Cases
C. L. 281.

† *Seet. 8.* It is also said, (a) that to bring the offenders within the penalties of the first clause of the above statute, they must be armed with *offensive weapons* ; but it is also said, that it is not necessary that every individual assembled should be provided with an offensive weapon (b) ; and (a) Hutchin-
son’s, Case,
Cases C. L. 280.
(b) Franklyn’s
Case, Cald,
yet
244.

(a) Fletcher's Case, Cases Cro. Law 281, notes. yet it seems (a) that it must appear on the trial that the prisoner was armed with an offensive weapon.

Stra. 1166.
O. B. 1786,
p. 857.
O. B. 1785,
p. 424.
O. B. 1785,
p. 780.
Cases in Cro.
Law 280.

+ Sect. 9. It has also been said, that the weapons must be such as are calculated for the purposes of offence; therefore where one man had only a common horse-hip, although all the rest of the gang had fire-arms, the Attorney-general declined to argue the point, and the prisoner was discharged. So also a hatchet has been thought no offensive weapon within this act, where it was only caught up upon the spur of the occasion, and belonged to the prisoner in the way of his business. So also a large stick with three natural prongs and a large head, has been held no offensive weapon. But it is impossible for the law to draw a precise line which will hold in all cases as to what shall, or shall not, be called an offensive weapon. It must greatly depend on the circumstances of the case; for it would be going a great deal too far to say that nothing but guns, pistols, daggers, and instruments of war should be considered as offensive weapons; bludgeons, clubs, and any thing not in common use; pokers, shovels, tongs, &c. and even a common walking-stick, may be offensive weapons, according to the circumstances which accompany the use of them. It is therefore a question of fact for the jury, whether the instrument was carried for the purposes of offence or not?

Hutchinson's
Case, Cases
Cro. Law 280.

+ Sect. 10. It is said, that the third branch of the above statute, viz. "or if any person shall have his face blacked, or wear any vizard, mask, or other disguise when passing with such goods," has, apparently, no regard to the number of persons, nor to their being armed with offensive weapons; and therefore that an *individual* passing disguised with uncustomed goods would, in all probability, be deemed within the penalties of the act: and also that the fourth branch of the statute, viz. "or shall forcibly hinder, obstruct, assault, &c." being coupled by the word "or" to the preceding section, seems to be a clause that would reach any individual who shall forcibly hinder or obstruct a revenue-officer in the execution of his duty.—But it is also said, that as the statute 19. Geo. 3. c. 69. s. 10. has reduced this offence to a *misdemeanor*, the clause in the statute 19. Geo. 2. c. 34. is virtually repealed,

Any person
who shall ob-
struct any of-
ficer in seizing
goods;

+ Sect. 11. By 19. Geo. 3. c. 69. s. 10. it is further enacted,
"That if any person or persons whatsoever shall assault,
resist, oppose, molest, obstruct, or hinder, any officer
or officers of the customs or excise in due seizing or
securing any coffee, tea, cocoa-nuts, chocolate, foreign
brandy,

“ brandy, or other foreign spirituous liquors, or any
 “ other goods whatsoever which by any officer or of-
 “ ficers of the customs or excise shall or may be liable
 “ to be seized by virtue of or in pursuance of any act now
 “ in force; or shall by force or violence rescue, or shall
 “ cause to be rescued, any of the said goods, after the same
 “ shall have been seized by such officer or officers aforesaid,
 “ or shall attempt or endeavour so to do; or, after such or shall
 “ seizure, shall cut, stave, break, or otherwise destroy or attempt to
 “ damage any casks, vessels, boxes, or package, wherein rescue the
 “ the same respectively shall be contained; it shall and may same; or shall
 “ be lawful to and for the officers of the customs and ex- damage any
 “ cise, and for all persons acting in their aid and assistance, casks, &c. in
 “ to stop, arrest, and detain, all and every the person and which such
 “ persons so offending, and him, her, or them, forthwith goods shall be
 “ to carry and convey before one or more of his majesty’s contained;
 “ justices of the peace, near to the place where the offence may be ar-
 “ shall be committed or done; and the justice or justices rested, &c.
 “ shall, if he or they see cause, commit the person or
 “ persons, so brought before him or them, to the next
 “ county gaol, until the next general quarter-sessions of
 “ the peace to be holden for the same county or place,
 “ there to be tried and dealt with as by this act is herein-
 “ after directed.”

† *Sec. 12.* By 24. Geo. 3. c. 47. s. 11. it is further enacted, If any person
 “ That if any person or persons upon the shore, or on shall malici-
 “ board any ship, vessel, or boat, shall maliciously shoot at ously shoot at
 “ or upon any ship, vessel, or boat, belonging to his ma- any ship, &c.
 “ jesty’s navy, or in the service of the customs or excise, or any officer
 “ within the limits of any port, harbour, or creek of when in exe-
 “ *Great Britain*, or within four leagues from any part of cution of du-
 “ the coast thereof; or if any person or persons, being ty, he shall
 “ on shore, or on board any ship, vessel, or boat, shall suffer death
 “ maliciously shoot at, maim, or dangerously wound as a felon.
 “ officer or officers of his majesty’s navy, or of the cus-
 “ toms or excise, whether attempting to go on board, or
 “ being on board, or returning from on board any ship,
 “ vessel or boat, or otherwise acting in the due execution
 “ of his or their duty on shore, or within the limits of any
 “ port, harbour, or creek of *Great Britain*, or within four
 “ leagues of any part of the coast thereof; or shall malici-
 “ ously shoot at, maim, or dangerously wound any person or
 “ persons aiding and assisting such officer or officers in
 “ the execution of his or their duty as aforesaid; then
 “ every person so offending, and all and every person be-
 “ ing aiding, abetting, or assisting therein, shall, being
 “ thereof lawfully convicted, be adjudged guilty of
 “ felony,

“felony, and shall suffer death as a felon without benefit of clergy.”

Persons obstructing officers of the navy, &c. in the execution of their duty, may be carried before a justice, who may commit them.

† *Stat. 13.* By 24. Geo. 3. c. 47. s. 15. it is further enacted, “That if any officer or officers of his majesty’s navy, or in the service of the customs or excise, being on shore, or going on board, or being on board, or returning from on board, any ship, boat, or vessel, within the limits of any of the ports of this kingdom, or within four leagues from the coasts thereof, shall be hindered, opposed, obstructed, or assaulted, in the due execution of his or their office or duty by any person or persons whatsoever, either in the day-time, or night; all and every person or persons so hindering, opposing, obstructing, or assaulting the said officer or officers in the due execution of his or their duty, and all such as shall act in his or their aid or assistance, shall and may be carried or conveyed before one or more of his majesty’s justices of the peace residing near to the place where such offence shall be committed; and such justice or justices shall, if he or they see cause, commit such person or persons to the next county gaol, there to remain until the next court of *oyer and terminer*, great session, or gaol-delivery, or until such person shall be delivered by due course of law; and in case an indictment shall be found against him or them, he or they shall plead thereto, without having time to traverse the same, as is usual in cases of misdemeanors: and being duly convicted thereof, shall, by order of the said court before whom such offender shall be convicted, be sentenced to hard labour on the river *Thames*, or other navigable river in that part of *Great Britain* called *England*, for any term not exceeding three years, according to the directions of an act passed in the nineteenth year of his present majesty’s reign, intituled, *An act to explain and amend the laws relating to the transportation, imprisonment, and other punishment, of certain offenders*, and as is by the said act directed for the punishment of persons convicted of grand larceny; or such court may order such offender to be committed to the common gaol, or house of correction, for any term not exceeding three years.”

Penalty on conviction.

19. Geo. 3. c. 74.

As to THE SECOND POINT, viz. In what cases smugglers may be required, by proclamation, to surrender themselves.

† *Stat. 14.* By 19. Geo. 2. c. 34. s. 2. “And for the more easy and speedy bringing the offenders against this act

act to justice," it is enacted, " That if any person or persons shall be charged with being guilty of any of the offences aforesaid, before any one or more of his majesty's justices of the peace, or before one of his majesty's justices of the court of *king's bench*, if the offence be committed in *England*; or before the lord justice general, or one of the lords of justiciary, or any one or more of his majesty's justices of the peace in *Scotland*, if the offence be committed in *Scotland*; by information of one or more credible person or persons upon oath, by him or them to be subscribed, such justice of the peace, or justice of the *king's bench*, or lord justice general, lord justice clerk, or lord of justiciary respectively, before whom such information shall be made as aforesaid, shall forthwith certify under his hand and seal, and return such information, to one of the principal secretaries of state of his majesty, his heirs or successors, who is hereby required to lay the same, as soon as conveniently may be, before his majesty, his heirs or successors, in his or their privy council; whereupon it shall and may be lawful for his majesty, his heirs or successors, to make his or their order, in his or their said privy council, thereby requiring and commanding such offender or offenders to surrender him or themselves within the space of forty days after the first publication thereof in the *London Gazette*, to the lord chief justice, or any other of his majesty's justices of the court of *king's bench*, or to any one of his majesty's justices of the peace, if the offence be committed in *England*; or to any of the lords of justiciary, or to any one of his majesty's justices of the peace in *Scotland*, if the offence be committed in *Scotland*; who is hereby required, upon such offender or offenders surrendering him or themselves, to commit him or them, without bail or mainprize, to the county gaol, or to the gaol or prison of the place where he or they shall so surrender, to the end that he or they may be forthcoming to answer the offence or offences wherewith he or they shall stand charged according to due course of law; which order the clerks of his majesty's privy council shall cause to be forthwith printed and published in the two successive *London Gazettes*, and to be forthwith transmitted to the sheriff of the county where the offence shall be committed, who shall, within fourteen days after the receipt thereof, cause the same to be proclaimed between the hours of ten in the morning and two in the afternoon, in the market-places, upon the respective market-days of two market-towns, in the same county, near to the place where such offence shall have been committed; and a

Persons charged upon oath with offences against this act.

Justice, &c. to certify information to one of the secretaries of state, who is to lay same before king in council;

Orders to be made for offender's surrender in 40 days;

and commitment without bail.

Order to be published in two Gazettes, and transmitted to the sheriff, who shall proclaim the same.

" true

Copy to be
affixed in
market-towns:
Offenders not
surrendering,
&c. to be con-
victed of fe-
lony without
clergy.

King's bench,
or justices of
oyer and ter-
miner, &c. to
award execu-
tion.

" true copy of such order shall be affixed upon some pub-
" lic place in such market-towns: And in case such offen-
" der or offenders shall not surrender him or themselves,
" pursuant to such order of his majesty, his heirs or suc-
" cessors, to be made in council as aforesaid, he or they so
" neglecting or refusing to surrender him or themselves as
" aforesaid, or escaping after such surrender, shall, from
" the day appointed for his or their surrender as afore-
" said, be adjudged, deemed, and taken to be convicted
" and attainted of felony, and shall suffer pains of death,
" as in cases of a person convicted and attainted by ver-
" dict, and judgment of felony without benefit of clergy,
" if the offence be charged to have been committed in
" *England*; and shall be adjudged, deemed, and taken to be
" convicted of a capital crime, and shall suffer the pains
" of death and confiscation of moveables, as in case of a
" person found guilty of a capital crime, and under sen-
" tence for the same, if the offence be charged to have
" been committed in *Scotland*; and that it shall be lawful
" to and for the court of *king's bench*, or the justices of
" *oyer and terminer*, or general gaol-delivery for the coun-
" ty or place where such person shall be, to award exe-
" cution against such offender and offenders, in such man-
" ner as if he or they had been convicted and attainted in
" the said court of *king's bench*, or before such justices of
" *oyer and terminer*, or general gaol-delivery respectively,
" if the offence be charged to have been committed in
" *England*; and that it shall be lawful for the court of jus-
" ticiary, or the lords of justiciary, in their circuits, to
" award execution against such offender and offenders, in
" such manner as if he or they had been found guilty and
" condemned in the said court of justiciary, or in the circuit
" respectively."

If any person
be charged
with any of-
fence made
felony by this
act.

† *Scot.* 15. By 24. Geo. 3. c. 47. s. 12. " For
the more easy and speedy bringing the offenders against
this act to justice," it is enacted, " That if any person
" or persons shall be charged with being guilty of any of
" the offences aforesaid, made felony by this act, before
" any one or more of his majesty's justices of the peace,
" or before one of his majesty's justices of the court of
" *king's bench*, if the offence be committed in *England*
" or *Wales*, or within the limits of any of the ports there-
" of, or within four leagues of the coasts thereof; or be-
" fore any one of the lords of justiciary, or the judge of
" the high court of admiralty, or any judge ordinary, or
" judge admiral, deputy, or substitute, in *Scotland*, if the
" offence be committed within *Scotland*, or within the li-
" mits of any port of that part of *Great Britain* called
" *Scotland*,

“ *Scotland*, or within four leagues of the coast thereof, by
 “ information of one or more credible person or persons,
 “ upon oath, by him or them to be subscribed; such jus-
 “ tice of the peace, or justice of the king’s bench, or any
 “ lord of justiciary, or judge of the high court of admi-
 “ ralty, or judge ordinary, or judge admiral, deputy, or
 “ substitute respectively, before whom such information Justice or
 “ shall be made as aforesaid, shall forthwith certify, under judge shall
 “ his hand and seal, and return such information to one certify and re-
 “ of the principal secretaries of state of his majesty, his turn informa-
 “ heirs or successors; who is hereby required to lay the tion to one of
 “ same, as soon as conveniently may be, before his majesty, the secretaries
 “ his heirs or successors, in his or their privy council; of state, &c.
 “ whereupon it shall and may be lawful for his majesty, his
 “ heirs or successors, to make his or their order, in his or
 “ their said privy council, thereby requiring and com-
 “ manding such offender or offenders to surrender him
 “ or themselves, within the space of forty days after the
 “ first publication thereof in the *London Gazette*, to the lord
 “ chief justice, or any other of his majesty’s justices of the
 “ court of king’s bench, or to any one of his majesty’s jus-
 “ tices of the peace, if the offence be committed within
 “ *England* or *Wales*, or within the limits of any of the
 “ ports thereof, or within four leagues of the coast thereof;
 “ or to any of the lords of justiciary, or judge of the high
 “ court of admiralty, or judge ordinary, or judge admi-
 “ ral, deputy, or substitute in *Scotland*, if the offence be
 “ committed within *Scotland*, or within the limits of any
 “ port of that part of *Great Britain* called *Scotland*, or with-
 “ in four leagues of the coast thereof; who is hereby re-
 “ quired, upon such offender or offenders surrendering him
 “ or themselves, to commit him or them, without bail or
 “ mainprize, to the county gaol, or to the gaol or prison
 “ of the place where he or they shall so surrender, to the
 “ end that he or they may be forthcoming to answer the
 “ offence or offences, wherewith he or they shall stand
 “ charged, according to due course of law; which order
 “ the clerks of his majesty’s privy council shall cause to
 “ be forthwith printed and published in two successive
 “ *London Gazettes*, and to be forthwith transmitted to the Order in
 “ sheriff of the county where the offence shall be com- council to be
 “ mitted, if the same shall be committed in any country; published, and
 “ and if the offence shall not be committed within any transmitted to
 “ county, but within the limits of any port as aforesaid, sheriffs, &c.
 “ or within four leagues of the coast of any part of *Great* who shall pro-
 “ *Britain*, to be transmitted to the sheriff of any county claim the
 “ near to the place where such offence shall be committed; same.
 “ which respective sheriff shall, within fourteen days af-
 “ ter the receipt thereof, cause the same to be proclaimed,
 “ within

Offenders not
surrendering
themselves, to
suffer death as
felons, &c.

King's bench,
&c. to award
execution a-
gainst such of-
fenders in like
manner as if
they had been
convicted in
the said court,
&c.

“ within the hours of ten in the morning and two in the
“ afternoon, in the market places, upon the respective
“ market days of two market towns in the same county in
“ which, or near to the place where such offence shall
“ have been committed; and a true copy of such order
“ shall be affixed upon some public place in such mar-
“ ket towns: and in case such offender or offenders shall
“ not surrender himself or themselves pursuant to such
“ order of his majesty, his heirs or successors, to be made
“ in council as aforesaid, he or they so neglecting or re-
“ fusing to surrender himself or themselves as aforesaid, or
“ escaping after such surrender, shall, from the day ap-
“ pointed for his or their surrender as aforesaid, be ad-
“ judged, deemed, and taken to be convicted and attain-
“ ed of felony, and shall suffer pains of death as in cases
“ of a person convicted and attainted by verdict and
“ judgment of felony, without benefit of clergy, if the of-
“ fence be charged to have been committed within *Eng-
“ land* or *Wales*, or within the limits of any of the ports
“ thereof, or within four leagues of the coast thereof;
“ and shall be adjudged, deemed, and taken to be con-
“ victed of a capital crime, and shall suffer the pains of
“ death, and confiscation of moveables, as in case of a per-
“ son found guilty of a capital crime, and under sentence
“ for the same, if the offence be charged to have been
“ committed within *Scotland*, or within the limits of any of
“ the ports thereof, or within four leagues of the coast
“ thereof; and that it shall be lawful to and for the court of
“ king's bench, or the justices of *oyer and terminer*, or
“ general gaol-delivery, or great sessions for the county
“ or place where such person shall be, to award execu-
“ tion against such offender or offenders, in such man-
“ ner as if he or they had been convicted and attainted in
“ the said court of king's bench, or before such justices
“ of *oyer and terminer*, or general gaol-delivery, or great
“ sessions respectively, if the offence be charged to have
“ been committed within *England* or *Wales*, or within
“ the limits of any of the ports thereof, or within four
“ leagues of the coast thereof; and that it shall be lawful
“ for the court of justiciary, or the lords of justiciary in
“ their circuits, or the judge of the high court of ad-
“ miralty, to award execution against such offender and
“ offenders in such manner as if he or they had been
“ found guilty and condemned in the said court of
“ justiciary, or in the circuit courts respectively, if the
“ offence shall be charged to have been committed within
“ *Scotland*, or within the limits of any of the ports thereof,
“ or within four leagues of the coast thereof.”

† *Sec.* 16. By 19. Geo. 2. c. 34. f. 3. and 4. and 24. Geo. 3. c. 47. f. 13. and 14. it is further enacted, "That all and every person and persons, who shall, after the time appointed as aforesaid for the surrender of any person or persons, so charged upon oath with any of the offences aforesaid, shall be expired, harbour, receive, conceal, aid, abet, or succour such person or persons, knowing him or them to have been so charged as aforesaid, and to have been required to surrender him or themselves by such order or orders as aforesaid, and not to have surrendered pursuant to such order or orders, being prosecuted for the same, within one year after the offence committed, and lawfully convicted thereof, shall be guilty of felony, and shall be transported as a felon or felons for the space of seven years, in the same manner as felons are or shall be appointed to be transported by virtue of any act or acts already made, or hereafter to be made, touching the transportation of felons; and if any such offender or offenders shall be found at large within *Great Britain* before the expiration of the said term, without lawful cause, he, she, or they shall suffer death as felons, and have execution awarded against him, her, or them, as persons attainted of felony, without benefit of clergy."

Any person harbouring such offenders, shall on conviction be guilty of felony, and be transported for seven years.

† *Sec.* 17. By 24. Geo. 3. c. 47. f. 14. it is provided, "That nothing herein contained shall be construed to prevent or hinder any judge, justice of the peace, magistrate, officer, or minister of justice whatsoever, from taking, apprehending, and securing such offender or offenders against whom such information shall be given, and for requiring whose surrender such order in council shall be made as aforesaid, by the ordinary course of law; and in case such offender or offenders, against whom such information, and for requiring whose surrender such order in council shall be made as aforesaid, shall be taken and secured, in order to be brought to justice, before the time shall be expired, within which he or they shall be required to surrender him or themselves by such order in council as aforesaid; that then, and in such case, no further proceeding shall be had upon such order made in council against him or them so taken and secured as aforesaid, but he or they shall be brought to trial by due course of law; any thing herein contained to the contrary in any wise notwithstanding."

Not to prevent any judge, justice, &c. from apprehending such offenders by the ordinary course of law.

The following constructions have been held upon this statute,

† *Sec. 18.* FIRST, That it is certainly necessary to suggest the several facts and requisites in the act on the roll, in order to ground a prayer for execution; for they are the several steps which the act requireth to be taken by the crown, in order to bring the prisoner under an attainder: And he may traverse them all, and the offender will not be affected, unless the several requisites mentioned in the act have been complied with in his particular case; and if he traverseth all or any of them, the *onus probandi* lies upon the crown; for this is not like the case of an attainder by act of parliament, in which the facts are settled, the person named, and the only question is, whether the prisoner is the identical person attainted.

Foster 56. † *Sec. 19.* SECONDLY, That if the prisoner would take advantage of the insufficiency of the suggestion, *viz.* because the names of the market-towns at which it is enacted the offender shall be proclaimed, is not set forth—he must demur. He cannot take advantage of it on motion.

Foster 56. † *Sec. 20.* THIRDLY, That if the prisoner pleads, he must do it *instante* and *ore tenus*, as is done in indictments; for there can be no inconvenience in his pleading *instante*, if he intends to put the proof of all the matters suggested on THE ROLL upon the crown.

Foster 56. † *Sec. 21.* FOURTHLY, That the prisoner is not intitled to a copy of the suggestion.

Foster 57. † *Sec. 22.* FIFTHLY, That the words “near to the place” are restrictive of the sheriff’s power, and that the proclamation must be made in the market-towns near the place, and not at remote towns, nor at towns even comparatively remote; for though it does not mean at the very next market-towns, it would be very dangerous to leave matters of this sort to the discretion of the sheriff merely.

† *Sec. 23.* SIXTHLY, That the proceedings at the trial shall be in the same form and manner as before justices of gaol-delivery.

Case of Geo. Coffins, Old. ley Sessions, 1755. † *Sec. 24.* SEVENTHLY, That if an offender be arraigned upon a suggestion on the surrender clause, and the crown should afterwards think proper to proceed against him by indictment on the merits of the case, the

At-

Attorney-general may enter a *nolle prosequi* on the record of the suggestion.

As to THE THIRD POINT, *viz.* In what county the offence of smuggling, &c. may be tried.

+ *Secl.* 25. By 19. Geo. 2. c. 34. f. 5. " And for the better and more impartial trial of any indictment or information which shall be found, commenced or prosecuted, for any of the offences made felony by this or any other act relating to the revenues of customs or excise," it is enacted, " That every such offence shall and may be inquired of, examined, tried, and determined, in any county within that part of the kingdom of *Great Britain* called *England*, in such manner and form as if the fact had been therein committed: Provided, that no attainer for any of the offences made felony by virtue of this act, shall make or work any corruption of blood, loss of dower, or forfeiture of lands or tenements." Offences where to be tried. Attainder not to effect corruption of blood &c. or forfeiture.

+ *Secl.* 26. By 24. Geo. 3. c. 47. f. 16. it is provided, " That in case any person shall be brought before any justice of the peace, being charged with having hindered, opposed, obstructed, or assaulted, any officer of the navy, customs, or excise, contrary to this act, and it shall appear that the offence with which such person is charged falls within the provisions of an act passed in the nineteenth year of his majesty's reign, intituled, *An act for the more effectually preventing the pernicious practices of smuggling in this kingdom; and for indemnifying persons who have been guilty of offences against the laws of the customs and excise, upon the terms therein mentioned*; it shall and may be lawful for such justice, if he thinks fit, instead of proceeding against such offender, according to the provisions of this act, to commit such offender to the county gaol until the next quarter-sessions of the peace; and in that case every such offender shall be tried and punished as by the said last recited act is directed, and not otherwise." Persons charged with obstructing officers, whose offence falls within the provisions of 19. Geo. 3. c. 69. may be committed until the next quarter sessions, &c.

+ *Secl.* 27. By 24. Geo. 3. c. 47. f. 17. " And for the speedy and impartial trial of any offence, which by this act is declared to be a felony or misdemeanor," it is enacted, " That every such offence, in case the same shall be committed within *England, Wales, or the town of Berwick upon Tweed*, or within the limits of any of the ports thereof, or within four leagues of any part of the coasts thereof, shall and may be inquired of, examined, tried, and

“ determined, before any court or courts of *oyer and terminer*, great session, or gaol-delivery, in any county within that part of *Great Britain* called *England*, or the dominion of *Wales*, in such manner as if the fact had been actually committed within such county; any law, usage, or custom, to the contrary in any wise notwithstanding.”

Offences committed in Scotland.

† *Stat.* 28. By 24. Geo. 3. c. 47. s. 18. it is enacted, “ That in case any offence, which by this act is declared to be a felony or misdemeanor, shall happen to be committed in that part of *Great Britain* called *Scotland*, or within the limits of any port thereof, or within four leagues of the coasts of the same, information of such offence may be given to any justice of the peace, judge ordinary, or judge admiral, depute or substitute, residing nearest the place where such offence may have been committed; who, if he shall see cause, may and shall grant a warrant for committing the person or persons complained of to the common gaol of the county, city, borough, or place, there to lie, until he is liberated in due course of law; and such person or persons shall and may be tried before the court of judicatory or circuit courts, or before the judge of the high court of admiralty at *Edinburgh*; or in case the offence be only such as is punishable by hard labour or imprisonment, the same may be tried before the judge ordinary of the county or place where the warrant was granted.”

Persons taken before a justice for a misdemeanor, not to be admitted to bail, without recognizance for appearance, &c.

† *Stat.* 29. By 24. Geo. 3. c. 47. s. 19. it is further enacted, “ That where any person or persons shall, by virtue of this present act, be arrested and taken before any one of his majesty’s justices of the peace, for any offence against this act deemed a misdemeanor, such person or persons shall in no case be admitted to bail, unless he shall first enter into a recognizance, with two sufficient sureties, to his majesty, his heirs and successors, in the sum of two hundred pounds, and the said sureties in one hundred pounds each, with condition that such person or persons shall appear at the then next ensuing court of *oyer and terminer*, or general-gaol-delivery, or great sessions, to be holden for such county for which the justice before whom he shall be brought shall act, and answer and plead to any indictment which may be found at or before such court for such misdemeanor; and such recognizance shall forthwith be transmitted to the clerk of assize, or other proper officer of the court of *oyer and terminer*, general gaol delivery, or great sessions, for such county as aforesaid.”

† *Stat.*

+ *Sect.* 30. By 24. Geo. 3. c. 47. s. 20. it is further enacted, “ That where any such misdemeanor is committed
 “ in *Scotland*, or within the limits of any port thereof, or
 “ within four leagues of the coasts of the same, the person
 “ or persons accused thereof, and taken before any justice of
 “ the peace, or other judge competent in *Scotland*, shall not
 “ be admitted to bail, unless he enter into a recognizance,
 “ with two sufficient sureties, to his majesty, his heirs and
 “ successors, in the sum of two hundred pounds, and the
 “ said sureties in one hundred pounds each, with condition
 “ that he shall stand trial, in the way and manner direct-
 “ ed by this act, and according to the forms practised in that
 “ part of the kingdom.”

Persons ac-
cused in *Scot-*
land, &c.

CHAPTER THE FORTY-EIGHTH

CONTINUED.

GRANTING FRAUDULENT PERMITS.

All distillers,
&c. to enter
their ware-
houses, &c. for
keeping bran-
dy, &c. at the
next excise-
office, on for-
feiture of 20l.
&c.

† *Sec.* 1. **BY** 6. Geo. I. c. 21. s. 11. IT IS RECITED, "That whereas his majesty's revenues, both of customs and excise, are much lessened by the clandestine importation of brandy, arrack, rum, spirits, and strong waters into this kingdom of *Great Britain*, from parts beyond the seas, without payment of any of the duties by law chargeable on the same, and the fair dealers in the said commodities much prejudiced in their trade therein," for remedy thereof it is enacted, "That all distillers, makers or sellers of or dealers
" in brandy, arrack, rum, strong waters or spirits, either
" *British* or foreign, either by wholesale or retail, shall
" make true and particular entry in writing of all ware-
" houses, storehouses, rooms, shops, cellars, vaults, and
" other places, by him, her, or them respectively made
" use of for the keeping of brandy, arrack, rum, spirits, or
" strong waters, either *British* or foreign, for sale, at the
" office of excise, within the compass or limits whereof
" such respective warehouses, storehouses, rooms, shops,
" cellars, vaults, and other places, shall be situated, and
" also of all brandy, arrack, rum, spirits, and strong wa-
" ters, *British* and foreign, which at the time of making
" of such respective entries shall be in such warehouses,
" storehouses, rooms, shops, cellars, vaults, and other
" places, and every of them respectively, on pain of for-
" feiting the sum of twenty pounds for every such ware-
" house, storehouse, room, shop, cellar, vault, or other
" place, which shall be so made use of by any such distiller,
" maker, seller, or dealer respectively, without making
" such entry thereof as aforesaid, together with the brandy,
" arrack, rum, spirits, and strong waters, which shall be
" found therein, and also the casks and vessels whatsoever
" containing the same."

Sec.

† *Secl.* 2. By 6. Geo. 1. c. 21. s. 12. it is enacted, All others
 “ That all and every other person or persons who shall who shall be-
 “ become distillers, makers or sellers of or dealers in any come distillers,
 “ such brandy, arrack, rum, spirits, or strong waters, shall, &c. to make
 “ before he, she, or they take any such brandy, arrack, like entry.
 “ rum, spirits, or strong waters, into his, her, or their
 “ custody or possession, make the like particular entry in
 “ writing of the several and respective warehouses, store-
 “ houses, rooms, shops, cellars, vaults, and other places
 “ intended by him, her, or them respectively to be made
 “ use of for the keeping of brandy, arrack, rum, spirits,
 “ or strong waters, either *British* or foreign, on pain of
 “ forfeiting the sum of twenty pounds for every such ware-
 “ house, storehouse, room, shop, cellar, vault, or other
 “ place, so to be made use of by such last-mentioned dis-
 “ tiller, maker, seller, or dealer respectively, without mak-
 “ ing such entry as aforesaid, together with the brandy,
 “ arrack, rum, spirits, and strong waters, which shall be
 “ found therein, and also the casks and vessels whatsoever
 “ containing the same.”

† *Secl.* 3. By 6. Geo. 1. c. 21. s. 13. it is enacted, No brandy
 “ That no brandy, arrack, rum, spirits, or strong waters, be brought
 “ either *British* or foreign, shall be brought into such into such
 “ warehouse, storehouse, room, shop, cellar, vault, or warehouses,
 “ other place made use of by any distiller, maker or seller &c. without
 “ of or dealer in brandy, arrack, rum, strong waters or notice, &c. on
 “ spirits, without first giving notice thereof to the officer forfeiture, &c.
 “ of excise of the division or place in which such ware-
 “ house, storehouse, room, shop, cellar, vault, or other
 “ place in which such brandy, arrack, rum, spirits, or
 “ strong waters are intended to be lodged, and producing
 “ to the said officer, and leaving with him an authentic
 “ certificate, that the duties charged or chargeable upon all
 “ the said brandy, arrack, rum, spirits, or strong waters,
 “ so intended to be brought in as aforesaid, have been ac-
 “ tually paid, or that the same hath been condemned as
 “ forfeited, or was part of the stock of some importer.
 “ distiller, maker or seller of or dealer in brandy, arrack,
 “ rum, spirits, or strong waters, of which an account has
 “ been taken pursuant to this act, and expressing the quan-
 “ tity and quality thereof, and at what port or place the
 “ said duties were so paid, or the brandy, arrack, rum,
 “ spirits or strong waters condemned as aforesaid, or of
 “ whose stock the same was part, on pain of forfeiting the
 “ brandy, arrack, rum, spirits and strong waters so brought
 “ in without such notice or certificate as aforesaid, toge-
 “ ther with the casks and vessels whatsoever containing
 “ the same.”

No brandy, &c. to be sold but in such warehouses, on forfeiture of 40s. a gallon.

Further provisions relating hereto, 11. Geo. 1. c. 30. sect. 2.

† Sect. 4. By 6. Geo. 1. c. 21. f. 15. it is further enacted, "That no brandy, arrack, rum, spirits, or strong waters, either *British* or foreign, shall be sold, uttered, or exposed to sale, either by wholesale or retail, but when the same shall be in some or one of the said warehouses, storehouses, rooms, shops, cellars, vaults, or other places so entered as aforesaid, upon pain of forfeiting the sum of forty shillings for every gallon of brandy, arrack, rum, spirits, or strong waters as shall be so sold, uttered, or exposed to sale in any other place or places than those entered as aforesaid, and in that proportion for any greater or lesser quantity."

Officer to give the seller certificates of the quantity of brandy sold, &c. and that the duty has been paid, &c.

† Sect. 5. By 6. Geo. 1. c. 21. f. 16. it is further enacted, "That where any such brandy, arrack, rum, spirits, or strong waters, as aforesaid, shall afterwards be sold in the said entered places, or any of them, in great or small quantities, the officer or officers of excise of the respective divisions or places where the same shall be so sold, shall be obliged, and are hereby required, from time to time, upon the request of the seller or sellers thereof (without fee or reward), to give to the respective buyers thereof certificates in writing, signed by the said respective officer or officers, expressing the quantities so sold, and the name and names of the respective buyers and sellers thereof, and that the duty of such brandy, arrack, rum, spirits and strong waters so sold has been paid, or that the same hath been condemned as forfeited, or was part of such stock as aforesaid, to satisfy the officer or officers of the excise of the respective divisions to which the same is intended to be carried, that the duty thereof has been paid, or that the same had been so condemned, or was part of such stock, that the seizing thereof may thereby be prevented."

No brandy, &c. exceeding a gallon, to be removed without a permit.

† Sect. 6. By 6. Geo. 1. c. 21. f. 17. it is further enacted, "That no brandy, arrack, rum, spirits, or strong waters, exceeding the quantity of one gallon, shall be removed or carried from any part of this kingdom to another, by land or by water, without such permit or certificate from some or one of the officers of his majesty's customs or excise, signifying and certifying the quality and quantity thereof, and that his majesty's duties chargeable thereon have been duly paid and satisfied, or that the same had been condemned, or was part of such stock as aforesaid, on pain of forfeiting the brandy, arrack, rum, spirits, and strong waters which shall be found carrying from one place to another without such permit or certificate, to be

“ together with the casks and vessels whatsoever containing
“ the same.”

† *Sec. 7.* By 6. Geo. 1. c. 21. f. 18. it is further enacted, Who shall be
“ That all and every person or persons whatsoever, who deemed sellers
“ shall have in his, her, or their custody, any brandy, ar- of brandy.
“ rack, rum, spirits, or strong waters, exceeding the quan-
“ tity of sixty-three gallons, shall be deemed and taken
“ to be a seller of and dealer in brandy, arrack, rum, spirits,
“ and strong waters, and subject to the survey of his ma-
“ jesty’s officers of excise.”

† *Sec. 8.* By 11. Geo. 1. c. 30. f. 10. IT IS RECITED,
“ That whereas several dealers in brandy, arrack, rum,
“ spirits, and strong waters, coffee, tea, and cocoa-nuts, in
“ order to secure quantities of the said commodities, which
“ have been clandestinely imported, without paying any of
“ the duties by law charged thereupon, from being seized as
“ forfeited for such clandestine importation thereof, do fre-
“ quently take out permits from the officer or officers for the
“ said duties upon coffee, tea, and chocolate, brandy, arrack,
“ rum, spirits, and strong waters, for the removing of the
“ said commodities from one place to another, but in reality
“ do not remove the commodities from the respective places
“ they are authorised by such permit to remove the same to
“ the respective places they are, by such permit, authorised
“ to carry the same commodities unto, but make use of such
“ permits for securing the like quantity of commodities men-
“ tioned in such permits, which have been clandestinely im-
“ ported, from being seized as forfeited for such clandestine
“ importation;” for remedy thereof it is further enacted,
“ That if any person or persons whatsoever shall take out
“ any permit or permits from the officers employed in the
“ said duties, or any of them, for removing of any of the
“ said commodities from one place to another; and if with-
“ in the times limited in such permit or permits respectively,
“ the party or parties, by or for whom such permit or per-
“ mits shall be so taken out, shall not either actually and
“ really send away all the commodities by such permit or
“ permits authorised thereby to be sent away, pursuant to
“ the true intent and meaning thereof, or in default of so
“ sending away such commodities, shall not before the ex-
“ piration of the time limited in and by such permit and
“ permits, respectively; return such permit and permits to
“ the officer or officers from whom the same was had; then,
“ and in every such respective case and cases, the person
“ or persons taking out such permit or permits, or for
“ whose use such permit or permits shall be taken out, shall,
“ for

Penalty for
taking out
permits, and
not sending
away the com-
modities in the
time limited,

or not return-
ing the per-
mits, treble
the value.

If there does not appear a sufficient decrease to answer the removal, officers to seize a like quantity of the brandy, &c.

No permit for removal but by direction of him from whose stock commodities are to be removed.

Penalty sol. or imprisonment.

Directions relative to taking out permits, and removing foreign spirits.

“ for every gallon of brandy, arrack, rum, spirits, and
 “ strong waters, and for every pound weight of coffee, tea,
 “ and cocoa-nuts, mentioned in such permit or permits, and
 “ not removed according to the purport thereof, forfeit and
 “ lose treble the value thereof, to be estimated according to
 “ the highest rate of the like commodities at the time
 “ when such forfeiture shall be incurred: and if such per-
 “ mit or permits are not so returned as aforesaid, and
 “ in case, upon taking an account by any of the officers
 “ for the said duties upon brandy, arrack, rum, spirits,
 “ and strong waters, and for the said inland duties of the
 “ stock of the coffee, tea, and cocoa-nuts, remaining in
 “ the hands or custody of the person or persons from or
 “ out of whose stock the commodities mentioned in such
 “ permit or permits as aforesaid, are thereby authorised to
 “ be removed, there shall not appear a sufficient decrease
 “ to answer the removal of the commodities mentioned in
 “ such permit or permits as aforesaid, respectively; then,
 “ and in such case, the respective person or persons, from
 “ or out of whose stock the said commodities men-
 “ tioned in the said permit or permits shall be authorised
 “ to be removed, shall forfeit and lose the like quantities of
 “ the respective commodities so permitted to be removed,
 “ and not removed according to such permission, to be
 “ seized and taken by the officers for the said respective
 “ duties, for his majesty’s use, out of the like commodities
 “ then in the possession of the person or persons forfeiting
 “ the same: provided always, that no person or persons
 “ whatsoever shall demand, take, or receive, any permit or
 “ permits from any officer or officers for the said respective
 “ duties, for the removal of any of the said commodities
 “ from one place to another, without the special direction
 “ in writing, of the person or persons, or the known
 “ servant or servants of the person or persons from or
 “ out of whose stock the said commodities are to be re-
 “ moved; upon pain of forfeiting for every such offence
 “ therein the sum of fifty pounds, or in default of the
 “ payment thereof, shall suffer imprisonment for and
 “ during the space of three months, without bail or main-
 “ prize.”

† Sec. 7. 9. By 23. Geo. 3. c. 70. s. 3. IT IS RECITED,
 “ The better to prevent foreign spirituous liquors that have
 “ been illegally imported into this kingdom, from being re-
 “ moved from the sea coasts into the stocks of entered dealers
 “ in those commodities, and of others,” it is enacted, “ That
 “ no seller of or dealer in foreign brandy, arrack, rum,
 “ spirits, or strong waters, shall be allowed to take out
 “ more

“ more than one permit in one and the same day to any
 “ one person whatsoever (except as herein-after is excepted),
 “ which permit shall be granted for the removal of no more
 “ than one cask, or other package, containing any foreign
 “ spirituous liquors of one kind or species; and if any
 “ more than one cask, or other package, of foreign spiri-
 “ tuous liquors of one kind or species at one time, directed
 “ to one and the same person (or persons, where there are
 “ two or more in joint trade or partnership, except as
 “ herein-after is excepted), shall be found removed or car-
 “ ried, or removing or carrying, from one place in this
 “ kingdom to any other place, whether with or without
 “ permit, the same, together with the vessels and boats,
 “ and the horses and other cattle, and the carriages em-
 “ ployed in removing or carrying the same, shall be for-
 “ feited, and shall and may be seized by any officer or of-
 “ ficers of excise.”

† *Seet. 10.* By 23. Geo. 3. c. 70. f. 4. it is provided,
 “ That nothing herein contained shall be construed to pre-
 “ vent any dealer in foreign spirituous liquors from taking
 “ out two or more permits, and by virtue thereof sending
 “ two or more casks, or other packages, containing foreign
 “ spirituous liquors of the same kind and species, to the
 “ same person in the same day, so as each and every such
 “ cask or package respectively shall be sent under different
 “ permits, and by different conveyances.”

† *Seet. 11.* By 23. Geo. 3. c. 70. f. 5. it is also provided,
 “ That nothing herein-before contained shall be construed
 “ to prevent any seller of or dealer in foreign spirituous
 “ liquors, from sending with one and the same permit, by
 “ one and the same conveyance, any number of casks, with
 “ any kind of foreign spirituous liquors therein, each
 “ such cask then containing sixty gallons, or upwards, of
 “ foreign spirituous liquors of one and the same kind or
 “ species.”

† *Seet. 12.* By 23. Geo. 3. c. 70. f. 7. it is enacted, Particulars to be specified in request notes for permits.
 “ That when any seller of or dealer in foreign spirituous li-
 “ quors shall send a request note to any permit writer, re-
 “ quiring any permit or permits for the removal of any
 “ foreign spirituous liquors from his own stock into the
 “ stock of any other person or persons, every such seller
 “ and dealer shall, and he is hereby required and directed
 “ to specify, in every such request note, as well the quality
 “ or kind of foreign spirituous liquors, intended to be re-
 “ moved with each permit, as also the contents of the cask
 “ or

“ or other package containing the same, and likewise whether the same is to be removed by land or by water, and by what mode of conveyance the said cask, bottle, or other package respectively, is intended to be sent; and if any seller of or dealer in foreign spirituous liquors shall neglect or refuse to specify, in every such request note, either the quality of the spirituous liquors intended to be removed, or the contents of the cask, bottle, or other package containing the same; or by what carriage, or mode of conveyance, the same is intended to be sent, every such request note and notes shall be null and void; nor shall any permit or permits be granted by any officer or permit writer thereon.

† *Stat. 13.* By 23. Geo. 3. c. 70. s. 8. IT IS RECITED, “ That whereas, for the better securing the duties chargeable upon exciseable commodities, the dealers therein are, by several statutes now in force, required to take out permits from the proper officers of excise, certifying that those duties have been paid, which permits are to accompany such commodities when removing from one part of this kingdom to any other part thereof: and whereas great frauds have been committed by forging permits in imitation of those granted by such officers, and the penalties already provided to prevent such forgeries are not sufficient to suppress so great an evil: for the more effectual preventing such practices, so manifestly tending to the ruin of the fair trader, and to the diminution of so material a branch of the revenue of this kingdom,” it is enacted, “ That the respective commissioners of excise in *England* and *Scotland* shall provide, or cause to be provided, moulds or frames for the making of paper to be used for permits, which paper shall have the words *excise office* visible in the substance of such paper; and shall also provide, or cause to be provided, one or more plate or plates, engraved with certain marks, stamps, and devices, in manner as to them shall seem meet (which marks, stamps, and devices on the said plates, or any of them, may from time to time be varied or altered in such manner, and as often as the said commissioners for the time being respectively shall think necessary), for the printing, stamping, and marking the said paper; and all permits from thenceforth to be given or granted, by the respective officers for the several duties of excise and inland duties, for the removal of any exciseable commodity, shall be printed, stamped, and marked by the said plate or plates on paper so made, with the words *excise office* visible in the substance thereof; which said paper shall be made, and the said plate or plates

Commissioners to provide moulds for making of paper to be used for permits, &c.

“ plates shall be engraven, by such person and persons respectively as are now, or hereafter shall be, appointed by the said commissioners of excise, or the major part of them, from time to time, under their respective hands and seals, for those purposes; and as well the said paper so made, as also the said plate or plates so engraved as aforesaid, shall be kept by such officer or officers as shall from time to time be appointed by the said commissioners, or the major part of them respectively, for keeping the same: and the officer or officers to be appointed for printing permits, shall not print, stamp, or mark any paper whereon any permit or permits shall be given or granted for the removal of any exciseable commodity, but on the paper so provided as aforesaid, and having the words *excise office* visible in the substance of such paper.”

+ *Sec. 14.* By 23. Geo. 3. c. 70. s. 9. it is further enacted, “ That if any person or persons whatsoever (not being authorized by the respective commissioners of excise in *England* and *Scotland* so to do) shall make, or cause or procure to be made, or shall knowingly aid or assist in the making, or without being authorized or appointed as aforesaid, shall knowingly have in his, her, or their custody or possession, without lawful excuse (the proof whereof shall lie on the person accused), any frame, mould, or instrument, for the making of paper with the words *excise office* visible in the substance of such paper; or shall make, or cause or procure to be made, or knowingly aid or assist in the making any paper in the substance of which the words *excise office* shall be visible; or if any person (except as before excepted) shall, by any art, mystery, or contrivance, cause or procure the said words *excise office* to appear visible in the substance of any paper whatever; or if any person or persons whatever (not being appointed as aforesaid) shall engrave, cut, or make, or shall cause or procure to be engraven, cast, cut, or made, any plate or plates, or other thing, with any mark, stamp, or device thereon, in imitation of, or to resemble any mark, stamp, or device made and used by the direction of the said commissioners of excise, or the major part of them respectively, in manner as aforesaid, for the purpose of printing, stamping, and marking of the paper to be used for a permit or permits, to accompany any exciseable commodity or commodities removing or removed from one part of this kingdom to any other part thereof, in pursuance of the directions of the several statutes requiring such permit; every person so offending in any of the cases aforesaid, and being thereof lawfully
 All persons who shall make any mould, &c. for making such paper as aforesaid, or assist in making such paper, &c. unless appointed by the commissioners of excise, shall suffer death as before fully

“ fully convicted, shall, for such offence, be deemed and
 “ adjudged a felon, and shall suffer death, as in cases of
 “ felony, without benefit of clergy.

Persons coun-
 terfeiting per-
 mits, &c.

+ *Stat. 15.* By 23. Geo. 3. c. 70. s. 10. it is further en-
 acted, “ That if any person or persons whatsoever shall
 “ counterfeit or forge, or cause to be counterfeited or
 “ forged, any permit for the removal of any exciseable
 “ commodity from one part of this kingdom to any other
 “ part thereof, for the removal of which a permit or
 “ certificate is by any act or acts of parliament now in
 “ force required; or if any person or persons shall know-
 “ ingly or willingly give any false or untrue permit, or
 “ shall knowingly or willingly accept or receive any false
 “ or untrue permit with any such exciseable commo-
 “ dity to be removed or removed as aforesaid; or if
 “ any person or persons shall fraudulently alter or erase
 “ any permit, after the same shall have been given or
 “ granted by the proper officer of excise; or if any
 “ person or persons shall knowingly or willingly pub-
 “ lish or make use of any such permit so counterfeited,
 “ forged, false, untrue, altered, or erased; every person so
 “ offending shall (in lieu of any former penalty), for
 “ each and every such offence, forfeit and lose the sum
 “ of five hundred pounds; which forfeiture shall and
 “ may be prosecuted in any of his majesty’s courts of
 “ record at *Westminster*, or in the court of exchequer
 “ in *Scotland*.”

shall forfeit
 500*l.*

Penalty on ex-
 cise officers
 delivering out
 paper for per-
 mits impro-
 perly,

+ *Stat. 16.* By 23. Geo. 3. c. 70. s. 11. it is further
 enacted, “ That if any officer of excise, or other inland
 “ duties, shall deliver out, or suffer to be delivered out,
 “ any paper having the words *excise office* visible in the
 “ substance thereof, either before or after the stamp
 “ or mark, so to be provided as aforesaid, shall be
 “ printed thereon, or before the same shall be filled up,
 “ agreeable to the request note brought from any trader,
 “ for the purpose of having a permit for the removal
 “ of some exciseable commodity; or if any such of-
 “ ficer shall knowingly give or grant any false or un-
 “ true permit, or shall make any false or untrue entry
 “ in the counterpart or counterparts of any permit or
 “ permits, by him given or granted for the removal of
 “ any exciseable commodity from the stock of any dealer
 “ therein; or shall knowingly and willingly receive or
 “ take any exciseable commodity whatsoever into the
 “ stock of any such dealer, brought in with any false,
 “ forged, or untrue permit, or shall knowingly permit or
 “ suffer

or granting
 false permits,
 &c.

“ suffer the same to be done, directly or indirectly, con-
“ trary to the true intent and meaning of the several sta-
“ tutes in such case made and provided, every such officer
“ so offending, being thereof lawfully convicted, shall be
“ adjudged guilty of felony, and shall be transported, in
“ like manner as other felons are directed to be transported,
“ by the laws and statutes of this realm, for any time not
“ exceeding seven years.”

CHAPTER THE FORTY-EIGHTH

CONTINUED.

TRANSPOSING STAMPS.

Persons committing frauds on stamped vellum, &c.

† *Sec. 1.* **BY** 12. Geo. 3. c. 48. s. 1. it is recited, “ For the more effectual prevention of several frauds, whereby his majesty’s duties on stamped vellum, parchment, and paper, have been very much diminished, the penalties thereon prescribed being found insufficient to deter offenders,” it is enacted, “ That if any person or persons shall write or engross, or cause to be written or engrossed, either the whole or any part of any writ, mandate, bond, affidavit, or other writing, matter, or thing whatsoever, in respect whereof any duty is or shall be payable by any act or acts made, or to be made, in that behalf, on the whole, or any part of any piece of vellum, parchment, or paper whereon there shall have been before written any other writ, bond, mandate, affidavit, or other matter or thing, in respect whereof any duty was or shall be payable as aforesaid, before such vellum, parchment, or paper shall have been again marked or stamped, according to the said acts; or shall fraudulently erase or scrape out, or cause to be erased or scraped out, the name or names of any person or persons, or any sum, date, or other thing, written in such writ, mandate, affidavit, bond, or other writing, matter, or thing, as aforesaid; or fraudulently cut, tear, or get off any mark or stamp, in respect whereof, or whereby, any duties are or shall be payable, or denoted to be paid or payable as aforesaid, from any piece of vellum, parchment, paper, playing cards, outside paper of any parcel or pack of playing cards, or any part thereof, with intent to use such stamp or mark for any other writing, matter, or thing, in respect whereof any such duty is or shall be payable, or denoted to be paid or payable as aforesaid; then so often, and in every such case, every person so offending in any of the particulars beforementioned, and every person knowingly and willingly aiding, abetting, or assisting any person or persons to commit any such offence or offences as aforesaid, shall be deemed and construed to be guilty of felony, and being thereof convicted by due course of law, shall be transported

guilty of felony.

“ ported to some of his majesty’s plantations beyond the
 “ seas, for a term not exceeding seven years, according to
 “ the laws in force for the transportation of felons :

† *Señ. 2.* And by 12. Geo. 3. c. 48. s. 1. “ If any
 “ such person or persons so convicted or transported shall
 “ voluntarily escape or break prison, or return from
 “ transportation before the expiration of the time for which
 “ he, she, or they shall be so transported as aforesaid, such
 “ person or persons, being thereof lawfully convicted, shall
 “ suffer death as a felon, without benefit of clergy, and shall
 “ be tried for such felony in the county where he, she, or
 “ they shall be apprehended.”

† *Señ. 3.* By 12. Geo. 3. c. 48. s. 2. it is further enacted,
 “ That if any person or persons shall commit any of the
 “ offences aforesaid, and afterwards, being out of prison,
 “ discover one or more persons who shall, since that time,
 “ have committed any of the offences aforesaid, so as such
 “ person or persons discovered shall be convicted of such
 “ offence or offences, he, she, or they, so discovering,
 “ shall have and be intitled to his majesty’s gracious par-
 “ don for all such offences by him or her committed at any
 “ time or times before such discovery made.”

† *Señ. 4.* It seems doubtful, whether if a person take Rex v. Field,
 some of the stamps from one writ and fix them to another Cates Cro.
 writ of the same kind, and then sell it for the purpose of its Law, 296.
 being used by such person as might purchase it from his
 vendee, he is within the penalties of the above statute.

CHAPTER THE FORTY-NINTH.

O F

FRAUDULENT BANKRUPTCY.

OFFENCES against *public trade*, created by statute, are,

1. Fraudulent bankruptcy.
2. Fraudulent insolvency.
3. Slaughtering cattle without licence.

† *SECT. 1.* By 5. Geo. 2. c. 30. f. 1. IT IS RECITED, Bankrupts
 “ That bankrupts have not only refused to surrender them- not surren-
 selves to the commissioners, and to discover and deliver up dering within
 their estate and effects to the said commissioners for the be- 42 days notice,
 nefit of their creditors, but have carried away and concealed
 the same in such manner, that the said commissioners have
 not been able to seize the same, to the manifest wrong
 and injury of their creditors, and to the great discourage-
 ment of trade :” AND ENACTED, “ That if any person or
 “ persons, who shall become bankrupt, and against whom
 “ a commission of bankrupt under the great seal of Great
 “ Britain hath been awarded and issued out, whereupon the
 “ person or persons against whom such commission hath
 “ issued or shall issue, have or hath been or shall be declared
 “ bankrupt or bankrupts, shall not within forty-two days
 “ after notice thereof in writing, to be left at the usual place
 “ of abode of such person or persons, or personal notice,
 “ in case such person or persons be then in prison, and
 “ notice given in the *London Gazette*, that such commission
 “ or commissions is, are, or have been issued, and of the
 “ time and place of a meeting of the commissioners therein
 “ named, or the major part of them, surrender him, her, or
 “ themselves to the said commissioners named in the said
 “ commission, or the major part of them, and sign or sub-
 “ scribe such surrender, and submit to be examined from
 “ time to time upon oath, or, being of the people called
 “ *quakers*, upon the solemn affirmation by law appointed
 “ for

conforming
to the sta-
tutes,

“ for such people, by and before such commissioners, or the
 “ major part of them, by such commission authorized, and
 “ in all things conform to the several statutes already made
 “ and now in force concerning bankrupts; and also upon
 “ such his, her, or their examination fully and truly dis-
 “ close and discover all his, her, or their effects and estate
 “ real and personal, and how and in what manner, to whom
 “ and upon what consideration, and at what time or times,
 “ he she, or they have or hath disposed of, assigned or
 “ transferred any of his, her, or their goods, wares, mer-
 “ chandizes, monies, or other estate and effects (and all
 “ books, papers, and writings relating thereunto) of which
 “ he, she, or they was or were possessed, or in or to which
 “ he, she, or they was or were any ways interested or in-
 “ titled, or which any person or persons had, or hath or
 “ have had in trust for him, her, or them, or for his, her,
 “ or their use, at any time before or after the issuing of the
 “ said commission, or whereby such person or persons, or
 “ his, her, or their family or families, hath or have, or may
 “ have or expect any profit, possibility of profit, benefit or
 “ advantage whatsoever, except only such part of his, her,
 “ or their estate and effects as shall have been really and
 “ *bona fide* before sold or disposed of in the way of his, her,
 “ or their trade and dealings; and except such sums of mo-
 “ ney as shall have been laid out in the ordinary expence of
 “ his, her, or their family or families; and also upon such
 “ examination deliver up unto the said commissioners by
 “ the said commission authorized, or the major part of them,
 “ all such part of his, her, or their the said bankrupts
 “ goods, wares, merchandizes, money, estate, and effects,
 “ and all books, papers, and writings, relating thereunto,
 “ as at the time of such examination shall be in his, her, or
 “ their possession, custody, or power (his, her, or their ne-
 “ cessary wearing apparel, and the necessary wearing apparel
 “ of the wife and children of such bankrupt only excepted);
 “ then he, she, or they, the said bankrupt or bankrupts, in
 “ case of any default and wilful omission in not surrendering
 “ and submitting to be examined as aforesaid, or in case he,
 “ she, or they shall remove, conceal, or embezzle any part
 “ of such his, her, or their estate real or personal, to the
 “ value of twenty pounds, or any books of account, papers
 “ or writings relating thereto, with an intent to defraud his,
 “ her, or their creditors (and being thereof lawfully con-
 “ victed by judgment or information), shall be deemed and
 “ adjudged to be guilty of felony, and shall suffer as felons,
 “ without benefit of clergy, or the benefit of any statute
 “ made in relation to felons; and in such cases such felon’s
 “ goods and estate shall go and be divided among the credi-
 “ tors seeking relief under such commission; any law,
 “ usage,

or embezzling
goods to the
value of 20l.
guilty of
felony.

Goods of
bankrupts
condemned
to go to the
creditors.

“ usage, or custom to the contrary thereof in any wise
“ notwithstanding.”

† *Sect. 2.* By 5. Geo. 2. c. 30. f. 2. it is provided, “ That
“ the said commissioners, authorized as aforesaid, shall ap-
“ point within the said forty two days so appointed as
“ aforesaid for the bankrupt to surrender and conform as
“ aforesaid, not less than three several meetings for the pur-
“ poses aforesaid, the last of which shall be on the forty-
“ second day hereby limited for such bankrupt’s appearance;
“ except on commissions already issued since the fourteenth
“ day of *May*, one thousand seven hundred and twenty-nine,
“ where the person or persons against whom such com-
“ mission issued has or have before surrendered and sub-
“ mitted to be examined; in which case the said commis-
“ sioners authorized as aforesaid, shall appoint only one sit-
“ ting more for the purposes aforesaid, unless the assignee
“ or assignees of the estate of such bankrupt shall think
“ more sittings necessary, and desire the same, and three
“ weeks notice at least shall be given in the *London Gazette*
“ of the time and place of such meetings.”

Number and
limitation of
sittings.

† *Sect. 3.* By 5. Geo. 2. c. 30. f. 3. it is also provided, Lrd Chan-
“ That it shall and may be lawful to and for the lord chan-
“ cellor or lord keeper, or commissioners for the custody of
“ the great seal of *Great Britain* for the time being, to en-
“ large the time for such person or persons surrendering
“ him, her, or themselves, and disclosing and discovering
“ his, her, or their estate and effects as aforesaid, as the said
“ lord chancellor, lord keeper, or such commissioners shall
“ think fit, not exceeding fifty days, to be computed from
“ the end of the said forty-two days, so as such order for
“ enlarging the time be made by the said lord chancellor,
“ lord keeper, or such commissioners, six days at least before
“ the time on which such person or persons was or were so
“ to surrender him, her, or themselves, and make such dis-
“ covery as aforesaid.”

Lord Chan-
cellor may
enlarge the
time for sur-
rendering.

† *Sect. 4.* It seems to be clearly agreed, that a bankrupt’s
wife cannot be examined on the part of the prosecution on
an indictment for this offence.

1. Peer Wm.
610.

† *Sect. 5.* It seems also, that if between the opening of
the commission and the time appointed for the bankrupt’s
surrender, the commissioners, on the examination of wit-
nesses, have reason to believe that he is secreting his effects,
they may, after his refusal to attend their summons to sur-
render, immediately certify the fact to a judge of the king’s
bench,

Ex parte
Lingard,
1. Atk. 240.

bench, who may grant his warrant for apprehending the bankrupt, and committing him to *Newgate*.

5. Mod. 309. † *Self*. 6. It is clear, however, that a bankrupt examined before the commissioners is not bound to answer any thing which tends to accuse himself.

Coke B. L. † *Self*. 7. It is agreed, that the court of chancery will not
 1. Salk. 348. lend its aid to a prosecution on this statute, by ordering the
 2. Bl. Rep. clerk under the commission to attend the trial and produce
 1144. the proceedings.
 2. Sira. 880.

CHAPTER THE FORTY-NINTH

CONTINUED.

OF

FRAUDULENT INSOLVENCY.

BY 28. Geo. 2. c. 13. f. 39. IT IS RECITED, "That several persons who are prisoners for debt choose rather to continue in prison, and spend their substance there, than discover and deliver up to their creditors their estates or effects, in order to the satisfaction of their just debts: AND THEREFORE ENACTED, "That it shall and may be lawful to or for any one or more of the creditors of any prisoner, upon twenty days notice in writing to be given to such prisoner, and the person in whose custody he or she is, to require the sheriff or sheriffs, gaoler or gaolers, or keeper of the prison wherein such prisoner is detained, to bring such prisoner before the justices, at their next general or quarter sessions of the peace, or any adjournment thereof, for the respective county, riding, division, city, town, or liberty, together with a copy or copies of the cause or causes of his or her detainer; and such prisoner, coming before such justices, at their said general or quarter sessions held as aforesaid, shall, at the desire of any one or more of his or her creditors, at whose suit he or she appears to be detained, be obliged to deliver in upon oath, and subscribe the like schedule of his or her estate or effects, to be vested, assigned, and equally divided, for the benefit of his or her creditors, in like manner as persons desiring to take the benefit of this act are required to do, subject to the same penalty of being adjudged a felon, and suffering as such, without benefit of clergy, on conviction of wilful perjury therein, as the said other prisoners are hereby subjected to; and shall, upon such discovery, to the satisfaction of the said justices, in their said general or quarter sessions held as aforesaid, or the major part of them, be discharged and set at liberty, in the same manner, and with the same benefit of making use of their discharge, as is hereby provided for prisoners seeking

Creditor may compel a prisoner to deliver in a schedule of his estate and effects.

Prisoner making discovery to be discharged.

On refusal to make the same, to suffer as a felon. “ seeking their discharge under this act; and if any such prisoners, so brought up as aforesaid, sha' neglect or refuse to deliver in and subscribe such schedule within forty days, he, she, or they, so neglecting or refusing, shall, upon conviction thereof, be adjudged guilty of felony, and shall suffer death as a felon, without benefit of clergy.”

CHAPTER THE FORTY-NINTH

CONTINUED.

O F

SLAUGHTERING CATTLE.

BY 26. Geo. 3. c. 71. f. 1. in order to prevent the trade of boiling horse flesh, &c. from facilitating the practice of stealing cattle, it is enacted, "That no person or persons shall keep or use any house or place for the purpose of slaughtering or killing any horse, mare, gelding, colt, filly, ass, mule, bull, ox, cow, heifer, calf, sheep, hog, goat, or other cattle, which shall not be killed for butchers meat, without first taking out a licence for that purpose, at the general quarter sessions held for the county, riding, city, town, district, division, or liberty, wherein such slaughtering house or place shall be situate; and the justices of the peace, at their general quarter-sessions assembled, are hereby authorised and empowered to grant such licences as aforesaid, upon a certificate, under the hands and seals of the minister and churchwardens, or overseers, or of the minister and two or more substantial householders of the parish wherein the person or persons applying for such licence shall dwell, that such person or persons is or are fit and proper to be trusted with the management and carrying on such business as aforesaid: Provided always, That in case of the death of any person to whom such licence as aforesaid shall be granted, it shall and may be lawful for the widow, or personal representative of such person so dying, to carry on the said business until the then next ensuing general quarter-sessions of the peace."

§ Sect. 2. By 26. Geo. 3. c. 71. f. 2. it is further enacted, "That every such licence shall be signed by the justices of the peace assembled at such general quarter-sessions, or by the major part of them; and a copy of every such licence shall be entered in a book to be kept for that purpose by the clerk of the peace of the county wherein the same shall be so granted as aforesaid; and that all and every person

Every person keeping a slaughtering-house, to take out a licence, &c.

Justices to grant licences, which are to be entered, &c.

Persons licensed to affix to their houses the words herein-mentioned.

“ person and persons shall have liberty, at all times (*Sundays*
 “ excepted), between the hours of ten and twelve of the
 “ clock in the forenoon, to search the office of such clerk
 “ of the peace wherein any such copy shall be entered or
 “ kept, and to make an extract or extracts from the same,
 “ paying for every such search the sum of six-pence; and
 “ all and every person and persons so licensed as aforesaid
 “ shall cause to be painted or affixed, over the door or gate
 “ of the house or place where he, she, or they shall carry on
 “ the said business, in large legible characters, his, her, and
 “ their name and names, with the words, “ *Licensed for*
 “ *slaughtering horses; pursuant to an act passed in the twenty-*
 “ *sixth year of his majesty King George the Third.*”

Previous notice to be sent, when horses, &c. are intended to be slaughtered, to the inspector, who is to take an account of the beasts.

† *Sec. 3.* By 26. Geo. 3. c. 71. s. 3. it is further enacted,
 “ That every occupier and occupiers of every such licensed
 “ slaughtering-house or place shall, six hours previous to
 “ the slaughtering or killing of any horse, mare, gelding,
 “ colt, filly, ass, mule, bull, ox, cow, heifer, calf, sheep,
 “ hog, goat, or other cattle, which shall not be killed for
 “ the purpose of butchers meat, and previous to the slaying
 “ any such horse, mare, gelding, colt, filly, ass, mule, bull,
 “ ox, cow, heifer, calf, sheep, hog, goat, or other cattle,
 “ brought dead to such slaughtering-house or other place,
 “ give notice in writing to a person to be appointed in man-
 “ ner herein-after mentioned, as inspector, to the intent
 “ that such inspector may, upon such notice as aforesaid,
 “ and before any such horse, mare, gelding, colt, filly, ass,
 “ mule, bull, ox, cow, heifer, calf, sheep, hog, goat, or
 “ other cattle, shall be slaughtered, killed, or slayed, take
 “ an exact account and description of the height, age (as
 “ near as may be), colour, and particular marks of every
 “ horse, mare, gelding, foal or filly, ass or mule, brought
 “ alive for the purpose of being slaughtered or killed, or
 “ brought dead as aforesaid, and of the colour and particular
 “ marks of every cow, bull, heifer, ox, calf, sheep, hog,
 “ goat, or other cattle, brought alive or dead for either of
 “ the purposes aforesaid; and no such horse, mare, gelding,
 “ foal or filly, ass, mule, ox, bull, cow or heifer, calf,
 “ sheep, hog, goat, or other cattle, shall be slaughtered,
 “ killed, or slayed, but between the hours of eight of the
 “ clock in the morning and four of the clock in the even-
 “ ing, during the months of *October, November, December,*
 “ *January, February, and March*; and between the hours of
 “ six of the clock in the morning and eight of the clock
 “ in the evening, during the months of *April, May, June,*
 “ *July, August, and September, in every year.*”

Time of slaughtering, &c.

† Sect. 4. By 26. Geo. 3. c. 71. s. 4. it is further enacted, Account to be kept by the owners of slaughtering-houses, of the owners of the cattle brought, &c.

“ That every person so licensed as aforesaid shall, at the time any horse, mare, or gelding, colt, filly, ass, or mule, or any ox, bull, cow, heifer, calf, sheep, hog, goat, or any other cattle, shall be brought for the purpose of slaughtering, killing, or slaying, make, or cause to be made, an entry in a book, to be kept for that purpose, in a fair legible hand, of the name and names, place and places of abode, profession and professions of the owner or owners thereof, and also of the person and persons who shall bring the same to be slaughtered, killed, or slayed, and the reason or reasons why the same is brought to be slaughtered, killed, or slayed, which reason and reasons the person or persons bringing the same is and are hereby required to declare to such person or persons so licensed as aforesaid; which book shall at all times be open for the perusal and examination of the inspector and inspectors to be appointed under this act; and all and every such licensed person and persons shall at all times attend with, and produce such book before any one justice of the peace for the county, city, liberty, or place, where such licensed slaughtering-house or place shall be situate, when required by warrant or order under the hand and seal of such justice of the peace so to do, and shall likewise produce the same at every general quarter-sessions of the peace which shall be held in and for the said county.”

† Sect. 5. By 26. Geo. 3. c. 71. s. 5. it is further enacted, Vestry to appoint inspectors.

“ That such of the parishioners as by law are intitled to meet in vestry for the purpose of choosing parish-officers, shall, in every parish wherein any such slaughtering-house or place shall be situated, annually, or oftener, as occasion may require, appoint one or more proper person or persons to be an inspector or inspectors to inspect every such slaughtering-house and place as aforesaid, to whom all and every occupier and occupiers, person and persons, carrying on such business as aforesaid, shall, six hours previous to his, her, or their slaughtering, killing, or slaying any such horse, mare, gelding, colt, filly, ass, mule, bull, ox, cow, heifer, calf, sheep, hog, goat, or other cattle, give notice in writing of his, her, or their intention so to do; and such inspector or inspectors shall, in person, or by his or their servant or servants, attend at the slaughtering-house or place of the person or persons so giving such notice, and there take such account and description as herein-before directed; and every such inspector shall, and is hereby required to keep a book or books, and therein to make an entry of every such account

Inspector's duty.

“ count and description ; and every such occupier or person
 “ carrying on such business as aforesaid, shall, for every such
 “ entry, pay to such inspector sixpence ; and all and every
 “ person and persons desiring to inspect such book or books
 “ shall have access to the same at all times, between the
 “ hours of eight of the clock in the morning and five in the
 “ evening, during the months of *October, November, Decem-*
 “ *ber, January, February, and March,* and between the hours
 “ of six of the clock in the morning and eight in the eve-
 “ ning, during the months of *April, May, June, July,*
 “ *August, and September,* in every year, paying to such in-
 “ spector, for every such search, the sum of six-pence, and
 “ no more ; and every such inspector, so appointed as afore-
 “ said, shall cause to be painted or affixed over the door of
 “ the house where he resides, his name, and the words,
 “ *Inspector of houses and places for slaughtering horses ;* and in
 “ case such inspector or inspectors shall, upon examination
 “ of any horse, mare, gelding, colt, filly, ass, mule, bull,
 “ ox, cow, heifer, calf, sheep, hog, goat, or other cattle,
 “ intended to be slaughtered or killed, have reason to believe,
 “ or be of opinion, that such horse, mare, gelding, colt,
 “ filly, ass, mule, bull, ox, cow, heifer, calf, sheep, hog,
 “ goat, or other cattle, is or are free from disease, and in a
 “ sound and serviceable state, or that the same has been
 “ stolen, or unlawfully come by, he or they shall have
 “ power, and is and are hereby authorized and required to
 “ prohibit the slaughtering or killing of any such horse,
 “ mare, gelding, colt, filly, ass, mule, bull, ox, cow, heifer,
 “ calf, sheep, hog, goat, or other cattle, for any time not
 “ exceeding the space of eight days ; and in the mean time
 “ shall, and is and are hereby directed and required to cause
 “ an advertisement or advertisements to be inserted in the
 “ *Daily Advertiser,* or some public newspaper circulated in
 “ the county where such slaughter-house or place shall be
 “ situated, twice or oftener, unless the owner or owners of
 “ such horse, mare, gelding, colt, filly, ass, mule, bull, ox,
 “ cow, heifer, calf, sheep, hog, goat, or other cattle, shall
 “ sooner claim the same, to certify under his, her, or their
 “ hand or hands to, or otherwise satisfactorily inform the
 “ said inspector or inspectors, that he, she, or they sent or
 “ delivered, or caused the said horse, mare, gelding, colt,
 “ filly, ass, mule, bull, ox, cow, heifer, calf, sheep, hog, goat,
 “ or other such cattle, to be delivered to the said person or
 “ persons so licensed, for the purpose of being slaughtered
 “ or killed, the expence of inserting such advertisement or
 “ advertisements as aforesaid, to be paid by the occupier or
 “ occupiers of such slaughtering-house or place to such
 “ inspector or inspectors ; and in case such occupier or
 “ occupiers of such slaughtering-house or place shall refuse
 “ to

“ to defray or pay the same, and shall be thereof convicted
 “ on the oath of any such inspector as aforesaid before any
 “ one justice of the peace for the county or district wherein
 “ such slaughtering-house or place shall be situated, he, she,
 “ or they, shall forfeit double the amount of the charge of
 “ such advertisement or advertisements, to be raised by dis-
 “ tress and sale of the goods and chattels of such offender
 “ or offenders, by warrant under the hand and seal of any
 “ such justice as aforesaid.”

† *Seet. 6.* By 26. Geo. 3. c. 71. s. 6. it is further enacted, Inspectors may visit slaughtering-houses at all times.
 “ That it shall and may be lawful to and for every inspector
 “ so appointed as aforesaid, at all times, in the day or night,
 “ but if in the night, then in the presence of a constable,
 “ to go to, enter into, and inspect, any house or place kept
 “ for slaughtering or killing horses by any person or per-
 “ sons licensed as aforesaid; and also any stable, building,
 “ shed, yard, or place belonging thereto, and then and there
 “ to examine, search for, and see if any horse, mare, gelding,
 “ foal, filly, ass, or mule, bull, cow, ox, heifer, calf, sheep,
 “ hog, goat, or other cattle, is or are deposited or have been
 “ brought there, and to take an account thereof; and all
 “ and every person and persons, so licensed as aforesaid,
 “ having, keeping, or using any such house or place for
 “ slaughtering horses, shall, and is and are hereby directed
 “ and required to permit and suffer any such inspector as
 “ aforesaid, at all times in the day and night, but if in the
 “ night, then in the presence of a constable, to enter into
 “ and inspect such house or place, and also any stable,
 “ building, shed, yard, or premises belonging thereto, and
 “ freely to examine, search for, and see any horse, mare,
 “ gelding, foal, filly, ass, or mule, bull, cow, ox, heifer,
 “ calf, sheep, hog, goat, or other cattle, then and there
 “ being, and to take such account as herein-before directed.”

† *Seet. 7.* By 26. Geo. 3. c. 71. s. 7. it is further enacted, Persons bringing cattle refusing to give an account of themselves, &c. may be carried before a justice.
 “ That in case any person or persons who shall offer to
 “ sale, or shall bring any horse, mare, gelding, foal, filly,
 “ ass, mule, bull, cow, ox, heifer, calf, sheep, hog, goat,
 “ or other cattle, to any person or persons keeping such
 “ slaughtering house or place as aforesaid, to be slaughtered
 “ or killed, or, being dead, to be flayed or skinned, shall not
 “ be able, or shall refuse to give a satisfactory account of
 “ himself, herself, or themselves, or of the means by which
 “ the same came into his, her, or their possession; or if
 “ there shall be any reason to suspect that such horse, mare,
 “ gelding, foal, filly, ass, mule, bull, cow, ox, heifer, calf,
 “ sheep, hog, goat, or other cattle, is or are stolen, or other-
 “ wise unlawfully obtained, it shall and may be lawful for
 “ the

Justices may
commit sus-
pected per-
sons.

“ the person or persons keeping such slaughtering-house or
“ place as aforesaid, to whom the same shall be brought or
“ offered to sale, and for his, her, or their servants, agents,
“ or assistants, and also for the said inspector or inspectors,
“ or his or their servant or servants as aforesaid, to seize
“ and detain such person or persons, and also every such
“ horse, mare, gelding, foal, filly, ass, mule, bull, cow, ox,
“ heifer, calf, sheep, hog, goat, or other cattle, so brought
“ or offered to sale as aforesaid, and to deliver such person
“ or persons, as soon as conveniently may be, into the cus-
“ tody of a constable or other peace-officer, who shall, and
“ is hereby required immediately to convey such person or
“ persons before a justice of the peace for the county, riding,
“ division, city, liberty, or place, where the offence shall be
“ committed; and if such justice shall, upon examination
“ and enquiry, have cause to suspect that such horse, mare,
“ gelding, foal, filly, ass, mule, bull, cow, ox, heifer, calf,
“ sheep, hog, goat, or other cattle, is or are stolen or un-
“ lawfully obtained, it shall and may be lawful for such
“ justice to commit such person or persons into safe cus-
“ tody, for any time not exceeding the space of six days,
“ in order to be further examined; and if upon either of
“ the said examinations, such justice shall be satisfied, or
“ have reason to believe, that such horse, mare, gelding,
“ foal, filly, ass, mule, bull, cow, ox, heifer, calf, sheep, hog,
“ goat, or other cattle, is or are stolen, or illegally obtained,
“ the said justice is hereby authorised and required to com-
“ mit the person or persons, so bringing or offering the
“ same to sale, to the common gaol or house of correction
“ of the county, riding, division, city, liberty, or place,
“ wherein the offence shall be committed, there to be dealt
“ with according to law.”

Persons
slaughtering
horses, &c.
without li-
cence, &c.
guilty of
FELONY.

† Sect. 8. By 26. Geo. 3. c. 71. s. 8. it is further enacted,
“ That if any person or persons, keeping or using any such
“ slaughtering-house or place as aforesaid, shall slaughter
“ any horse, mare, or gelding, foal or filly, ass or mule,
“ or any bull, cow, heifer, ox, calf, sheep, hog, goat, or
“ other cattle, for any other purpose than for butchers
“ meat, or shall slay any horse, mare, gelding, foal, filly,
“ ass, mule, bull, cow, heifer, ox, calf, sheep, hog, goat, or
“ other cattle, brought dead to such slaughtering-house or
“ other place, without taking out such licence, or without
“ giving such notice as aforesaid, or shall slaughter, kill, or
“ slay the same, at any time or times other than and except
“ within the hours herein-before limited, or shall not delay
“ slaughtering or killing the same, according to the direction
“ of such inspector so authorised to prohibit the same as
“ aforesaid, such person or persons so offending in either
“ of

“ of the said cases, being thereof convicted, shall be adjudged, deemed, and taken to be guilty of felony, and shall be punished by fine and imprisonment, and such corporal punishment, by public or private whipping, or shall be transported beyond the seas for any time not exceeding seven years, as the court before whom such offender or offenders shall be tried and convicted shall direct.”

† *Secl.* 9. By 26. Geo. 3. c. 71. s. 9. IT IS RECITED, Persons destroying hides, &c. to be deemed guilty of misdemeanors;
 “ That divers ill-disposed persons keeping such slaughtering-houses and places as aforesaid, have, in order to prevent enquiry and detection, made a practice of throwing the hides of horses and other cattle into lime-pits, or otherwise immersing in or rubbing the same with lime, or some other corrosive matter :” AND ENACTED, “ That if any person or persons, keeping or using any such slaughtering-house or place as aforesaid, shall throw into any lime-pit or lime-pits, or otherwise immerse in lime, or any preparation thereof, or rub therewith, or with any other corrosive matter, or destroy or bury the hide or hides, skin or skins, of any horse, mare, gelding, colt, filly, ass, mule, bull, ox, cow, heifer, calf, sheep, hog, goat, or other cattle, by him, her, or them slaughtered, killed, or slayed, or shall be guilty of any offence against this act, for which no punishment or penalty is expressly provided or declared, such person or persons, being convicted thereof, shall be adjudged, deemed, and taken to be guilty of a misdemeanor, and shall be punished by fine and imprisonment, and such corporal punishment, by public or private whipping, as the court before whom such offender or offenders shall be tried and convicted shall direct.”

† *Secl.* 10. By 26. Geo. 3. c. 71. s. 10. it is further enacted, “ That if any person or persons, so licensed as aforesaid, shall make or cause to be made any false entry in any such book by him, her, or them to be kept as aforesaid, of any matter or matters, thing or things, so required by him, her, or them to be made in such book as aforesaid, he, she, or they, being convicted thereof, upon the oath of two credible witnesses, before any one justice of the peace for the county, riding, franchise, or district wherein such slaughtering-house or place shall be situated (which said oath the said justice is hereby authorized and required to administer), shall, for every such offence, forfeit any sum not exceeding twenty pounds, nor less than ten pounds, to be levied by distress and sale of the goods and chattels of such offender or offenders,
 VOL. I. M m “ by

“ by warrant under the hand and seal of such justice (the
 “ surplus arising from such distress and sale, after the de-
 “ duction of the charges thereof, to be restored), one moiety
 “ thereof to be paid to the informer, and the other moiety
 “ thereof to be forthwith paid or transmitted, by the said
 “ justice, to the overseers of the poor, or one of them, for
 “ the use of the poor of the parish wherein such offender
 “ or offenders shall reside; and in case such offender or
 “ offenders shall not have effects to the amount of the said
 “ penalty, it shall be lawful for such justice, after sale and
 “ application as aforesaid of such effects as shall be found,
 “ to commit him, her, or them to the house of correction,
 “ there to be confined to hard labour for any time not ex-
 “ ceeding three months, nor less than one month.”

Inspector's
 books to be
 produced at
 the quarter-
 sessions.

+ *Sec. 11.* By 26. Geo. 3. c. 71. s. 12. it is further enacted,
 “ That the book and books of all and every the inspector
 “ and inspectors of every parish wherein any such slaughter-
 “ ing-house or place shall stand or be situated, shall be pro-
 “ duced at every general quarter-sessions of the peace to be
 “ holden in and for the county wherein any such licence
 “ shall be granted, and delivered to the justices of the peace
 “ at such general quarter-sessions assembled, then and there
 “ to be examined by them as they shall think fit.”

Penalty on
 persons lend-
 ing houses for
 the purpose of
 slaughtering.

+ *Sec. 12.* By 26. Geo. 3. c. 71. s. 13. it is further enacted,
 “ That if any person or persons shall occasionally lend any
 “ house, barn, stable, or other place, for the purpose of
 “ slaughtering or killing any horse, mare, gelding, colt,
 “ filly, ass, mule, bull, ox, cow, heifer, calf, sheep, hog, goat,
 “ or other cattle, which shall not be killed for butchers
 “ meat, without taking out such licence as aforesaid, and
 “ shall be thereof convicted before any justice of the peace
 “ for the county, riding, city, town, district, division, or
 “ liberty, wherein such person or persons shall reside, upon
 “ the oath of two credible witnesses, he, she, or they shall
 “ forfeit, upon conviction, for every such offence, any sum
 “ not exceeding twenty pounds, nor less than ten pounds;
 “ one moiety thereof to be paid to the informer, and the
 “ other moiety to the poor of the parish where the offence
 “ shall be committed; and which said last-mentioned moiety
 “ shall, upon payment thereof, be immediately transmitted
 “ by the justice so convicting to the overseers of the poor
 “ of the said parish, or one of them; and in case such
 “ penalty shall not be forthwith paid, such justice shall
 “ commit the offender to the common gaol or house of
 “ correction, there to remain without bail or mainprize for
 “ any time not exceeding three calendar months, nor less
 “ than

“ than one calendar month, unless the said penalty shall be
 “ sooner paid.”

† *Sect. 13.* By 26. Geo. 3. c. 71. f. 14. it is provided, And not to ex-
 “ That this act shall not extend to any currier, felt-maker, tend to cur-
 “ tanner, or dealer in hides, who shall kill any distempered riers, &c. kil-
 “ or aged horse, mare, gelding, colt, filly, ass, mule, bull, ling distem-
 “ ox, cow, heifer, calf, sheep, hog, goat, or other cattle, or pered horses,
 “ purchase any dead horse, mare, gelding, colt, filly, ass, &c.
 “ mule, ox, cow, heifer, calf, sheep, hog, goat, or other
 “ cattle, for the *bona fide* purpose of selling, using, or curing
 “ the hide or hides thereof, in the course of their respective
 “ trades; nor to any farrier employed to kill aged and dis-
 “ tempered cattle, nor to any person or persons who shall
 “ kill any horse, mare, gelding, colt, filly, ass, mule, bull,
 “ ox, cow, heifer, calf, sheep, hog, goat, or other cattle, of
 “ their own or other cattle, or purchasing any dead horse,
 “ or other cattle, to feed their own hounds or dogs, or
 “ giving away the flesh thereof for the like purpose.”

† *Sect. 14.* By 26. Geo. 3. c. 71. f. 15. it is further enacted, Collar-ma-
 “ That if any collar-maker, currier, felt-maker, tanner, or kers, &c. kil-
 “ dealer in hides, or farrier, or other person, shall, under ling sound
 “ colour of their respective trades or occupations, know- horses, &c.
 “ ingly or willingly kill any sound or useful horse, gelding, liable to
 “ mare, foal, or filly, or boil or otherwise cure the flesh penalty.
 “ thereof for the purpose of selling the same, such collar-
 “ maker, and other tradesman or person, shall be deemed
 “ and taken to be an offender within the meaning of this
 “ act, and shall, for every such offence, forfeit any sum not
 “ exceeding twenty pounds, nor less than ten pounds.”

† *Sect. 15.* By 26. Geo. 3. c. 71. f. 16. it is further enacted, Witnesses re-
 “ That it shall and may be lawful for any justice of the fusing to at-
 “ peace before whom complaint shall be made for any tend the jus-
 “ offence against this act, to summon such person or per- tices, to fora-
 “ sons, other than the party or parties complained against, feit sol.
 “ as he shall think proper, to appear before him at a day
 “ certain, then and there to give evidence touching any
 “ offence committed against this act; and in case such per-
 “ son or persons shall wilfully refuse or neglect to attend,
 “ or give evidence touching such offence, he, she, or they
 “ shall forfeit the sum of ten pounds, and in default of pay-
 “ ment thereof, or in case of inability to pay the same, shall
 “ stand committed to the common gaol or house of cor-
 “ rection, for any time not exceeding three calendar months,
 “ nor less than one calendar month, unless the said penalty
 “ shall be sooner paid.”

Parishioners
to be deemed
competent
witnesses.

† *Sec. 16.* By 26. Geo. 3. c. 71. s. 17. it is further enacted,
“ That any inhabitant of the parish where any offence
“ against this act shall be committed, shall, upon any com-
“ plaint or hearing before any justice or justices of the
“ peace, or upon any trial or examination by virtue of this
“ act, be, and be deemed to be, a competent witness, not-
“ withstanding his or her contributing to any of the rates
“ or dues to such parish; or being a poor person relieved
“ or relievable by the said parish, and intitled as such to
“ receive any benefit or interest from any penalty or penal-
“ ties to be paid or levied in pursuance of the directions of
“ this act; any law or usage to the contrary notwith-
“ standing.”

General issue.

† *Sec. 17.* By 26. Geo. 3. c. 71. s. 18. it is further enacted,
“ That if any person or persons shall, at any time or times,
“ be sued, molested, or prosecuted for any thing by him, her,
“ or them done or executed in pursuance of this act, or of
“ any clause, matter, or thing herein contained, such person
“ or persons may plead the general issue, and give the spe-
“ cial matter in evidence for his, her, or their defence; and
“ if upon the trial, a verdict shall pass for the defendant or
“ defendants, or the plaintiff or plaintiffs shall become non-
“ suited, then such defendant or defendants shall have treble
“ costs awarded to him, her, or them, against such plaintiff
“ or plaintiffs.”

Treble costs.

CHAPTER THE FIFTIETH.

PERSONATING A PROPRIETOR

OF

S T O C K.

THE offence of injuring the *public funds* consists in personating a proprietor of stock.

† *Stat. 1.* By 8. Geo. 1. c. 22. IT IS RECITED, “ That divers frauds and abuses have been or may be committed by persons falsely and deceitfully personating the true and real proprietors of the shares, annuities, and dividends of and in the capital stock and funds of such body or bodies politick or corporate as are established by act or acts of parliament in that behalf, or some of them :” AND ENACTED, “ That if any person or persons whatsoever shall falsely and deceitfully personate any true and real proprietors of the said shares in stock, annuities and dividends, or any of them, or any part thereof, and thereby transferring or endeavouring to transfer the stock, or receiving or endeavouring to receive the money of such true and lawful proprietor, as if such offender were the true and lawful owner thereof; then, and in every or any such case, all and every such person and persons (being thereof lawfully convicted in due form of law) shall be adjudged guilty of felony, and shall suffer as in cases of felony without benefit of clergy.”

† *Stat. 2.* By 9. Geo. 1. c. 12. s. 4. “ If any person or persons whatsoever shall falsely and deceitfully personate any true and real proprietor or proprietors of any the said order or orders, and thereby assigning or endeavouring to assign any of the said order or orders, or receiving or endeavouring to receive the money of such true and lawful proprietors, as if such offender were the true and lawful owner thereof; then, and in every or any such case, all and every such person and persons (being thereof lawfully convicted in due form of law) shall

“ be adjudged guilty of felony, and shall suffer as in cases
“ of felony without benefit of clergy.”

† *Sec. 3.* By 31. Geo. 2. c. 22. s. 77. IT IS RECITED,
“ That doubts may arise whether the statute 8. Geo. 1.
c. 22. extend to statutes made after the passing of the said
act :” AND ENACTED, “ That if any person or persons
“ whatsoever shall falsely and deceitfully personate any true
“ and real proprietor of the said shares in stock, annuities,
“ and dividends, or any of them, or any part thereof, of
“ or in any such capital stock or funds of any body
“ or bodies politick or corporate, established, or which
“ shall be established, by any act or acts of parliament, and
“ thereby transferring or endeavouring to transfer the stock,
“ or receiving, or endeavouring to receive the money, of
“ such true and lawful proprietor, as if such offender were
“ the true and lawful owner thereof; then, and in every
“ or any such case, all and every such person and per-
“ sons, being thereof lawfully convicted in due form of law,
“ shall be deemed guilty of felony, and suffer death as a fe-
“ lon, without benefit of clergy.”

Persons mak-
ing, or assist-
ing in mak-
ing, transfers
of stock in any
other names
than the own-
ers, guilty of
felony.

† *Sec. 4.* By 33. Geo. 3. c. 30. IT IS RECITED,
“ That the laws now in being have been found insufficient
to prevent forgeries and frauds in the transferring stocks,
annuities, and other public funds, transferrable at the bank of
England : And whereas, for the better preventing such for-
geries and frauds in future, it is necessary that further pro-
vision should be made, as well to prevent frauds practised
by persons taking upon themselves to make transfers, in
the books of the governor and company of the bank of
England, of stock or annuities, or other funds, transferra-
ble as aforesaid, whereof such persons are not the true own-
ers and proprietors, as to prevent forgeries of such transfers
in the names of the true owners or proprietors : and where-
as it is also necessary, the better to prevent such forgeries
and frauds, that the public accounts between the governor
and company of the bank of *England* and the several owners
and proprietors of stock, annuities, and other funds, trans-
ferrable at the bank of *England*, should be secured from
falsification by means of false entries therein, or of the al-
teration of any of the words or figures thereof, or by
any other ways or means whatsoever :” IT IS THEREFORE
ENACTED, “ That if any person or persons shall wilfully
“ make, or assist in making, any transfer of any interest,
“ part, or share of or in any stock or stocks, annuity or
“ annuities, or other funds, transferrable at the bank of
“ *England*, in any of the books of the said governor and
“ company of the bank of *England*, in which transfers of
“ stock,

“ stock, annuities, or other funds as aforesaid are made,
 “ in the name or names of any person or persons not be-
 “ ing the owner or owners, or proprietor or proprietors,
 “ of such stock, annuities, or other funds, transferrable as
 “ aforesaid, with intent to defraud the said governor and
 “ company of the bank of *England*, or any other body politic
 “ or corporate, or any person or persons whatsoever, such
 “ person or persons so making, or assisting in making, such
 “ transfer as aforesaid, shall be deemed guilty of felony,
 “ and shall suffer death as a felon or felons, without bene-
 “ fit of clergy.”

+ *Sec. 5.* It hath been determined on the above sta-
 tutes, that obtaining and indorsing a dividend warrant at
 the bank of *England* in the name of a stockholder is “ per-
 “ sonating a proprietor, and *thereby* endeavouring to receive
 “ the dividend,” although no attempt whatever is made to
 receive the money at the pay-office.

Parr's Case,
 Old Bailey,
 January Ses-
 sions 1787;
 Cases C. L.
 2d edit. 341.

CHAPTER THE FIFTY-FIRST.

O F

F O R G E R Y.

OFFENCES against *public credit* are generally committed by means of FORGERY.

FORGERY is the fraudulent making or alteration of a writing to the prejudice of another man's right; for which the offender may by the common law be punished by fine, imprisonment, and pillory, as will be more fully shewn in the second volume of this Treatise. But by a variety of statutes a more severe punishment is inflicted on the offender in certain particular cases, which we shall endeavour to enumerate under the following heads :

1. Forging franks.
2. Forging testimonial of justices.
3. Forging lottery tickets.
4. Forging post fines.
5. Forging marriage registers.
6. Forging stamps.
7. Forging the signature of the accountant-general.
8. Forging the seal of the South Sea company.
9. Forging East India bonds.
10. Forging the name of a proprietor of stock.
11. Forging documents relating to the admiralty.
12. Forg-

12. Forging the names of seamen.

13. Forging policies of insurance.

14. Forging exchequer bills.

15. Forging bank notes, &c.

16. Forging instruments for payment of money, &c. and orders for the delivery of goods.

As to THE FIRST POINT, *viz.* The forging of *franks*.

If any person counterfeit the writing of the superscription to avoid the postage, he shall be transported for seven years.

† *Stat.* 1. By 4. Geo. 3. c. 24. f. 8. it is enacted, "That if any person shall counterfeit the hand-writing of any person whatsoever, in the superscription of any letter or packet to be sent by the post, in order to avoid the payment of the duty of postage, every person so offending shall be deemed guilty of felony, and shall be transported for seven years."

As to THE SECOND POINT, *viz.* The forging of a testimonial of a justice of the peace,

Wandering soldiers and mariners shall have testimonials.

† *Stat.* 2. By 39. Eliz. c. 17. f. 3. it is enacted, "That every idle and wandering foldier or mariner which coming from his captain from the seas, or from beyond the seas, shall not have a testimonial under the hand of some one justice of the peace, of or near the place where he landed, setting down therein the place and time when and where he landed, and the place of his dwelling or birth unto which he is to pass, and a convenient time therein limited for his passage, or having such testimonial shall wilfully exceed the time therein limited, above fourteen days; and also as well every such idle and wandering soldier or mariner as every other idle person wandering as soldier or mariner, which shall at any time hereafter forge or counterfeit any such testimonial, or have with him or them any such testimonial forged or counterfeited as aforesaid, knowing the same to be counterfeited or forged; in all these cases every such act or acts to be felony, and the offenders to suffer as aforesaid, without any benefit of clergy."

It shall be felony to counterfeit a testimonial.

Justices of assize and gaol-delivery and peace may hear and determine these offences.

† *Stat.* 3. By 39. Eliz. c. 17. f. 4. it is further enacted, "That it shall be lawful for the justices of assizes, justices of gaol-delivery, and the justices of peace of every county, and for all justices of peace in towns corporate rate,

“ rate, having authority to hear and determine felonies, to
 “ hear and determine all such offences in their general
 “ sessions, and to execute the offenders which shall be con-
 “ victed before them, as in cases of felony is accus-
 “ ed; except some honest person valued at the last sub-
 “ sidy next before the time to ten pounds in goods, or
 “ forty shillings in lands, or else some honest freeholder,
 “ as by the said justices shall be allowed, will be con-
 “ tented before such justices as such person shall be ar-
 “ raigned of felony, to take him or them into his service
 “ for one whole year then next following, and then be-
 “ fore the said justices will be bound by recognizance of
 “ ten pounds, to be levied of his lands, goods, tenements,
 “ and chattels, to the use of our sovereign lady the queen, if
 “ he keep not the said person or persons for one whole
 “ year, and bring him to the next sessions for the peace and
 “ gaol-delivery next ensuing after the said year; and if any
 “ such person retained depart within the year, without the
 “ licence of him that so retained him, then to be indicted,
 “ tried and adjudged as a felon, and not to have the benefit
 “ of his clergy.”

Taking the
 offender into
 service for a
 year.

† *Stat.* 4. But by 32. Geo. 3. c. 45. s. 7. IT IS RE-
 CITED, “ That soldiers travelling from one place to another,
 having a certificate from their officers, or the secretary at
 war, are permitted to beg, and that mariners or seafaring
 men discharged are licensed to beg, by some testimonial or
 writing under the hand and seal of a justice of the peace;
 and whereas such permission to beg is highly improper;”
 it is therefore ENACTED, “ That every soldier and mari-
 “ ner wandering abroad and begging, shall be deemed a
 “ rogue and vagabond within the meaning of the said
 “ act.”

Soldiers and
 mariners
 wandering
 and begging,
 to be deemed
 vagabonds.

As to THE THIRD POINT, *viz.* The forging of *lottery*
tickets.

† *Stat.* 5. By 25. Geo. 3. c. 57. it is enacted, “ That
 “ if any person or persons shall forge or counterfeit, or
 “ cause or procure to be forged or counterfeited, or wil-
 “ lingly act or assist in the forging or counterfeiting any
 “ ticket or tickets, certificate or certificates, order or or-
 “ ders, made forth by virtue of this present act, or any
 “ former act made for establishing any lottery or lotte-
 “ ries, or altering any number, figure, or word therein,
 “ or utter, vend, barter, or dispose of any such false, al-
 “ tered, forged, counterfeited ticket or tickets, certificate
 “ or certificates, or order or orders, or shall bring any such
 “ forged or counterfeited ticket, certificate, or order, or any
 “ such

“ such ticket, certificate or order, the number whereof, or
 “ any figure or words therein, shall have been altered
 “ (knowing the same to be such) to the said managers, or
 “ any of them, or to the cashier or cashiers, or accountant-
 “ general of the bank of *England* for the time being, or
 “ to any other person or persons whatsoever, with a fraudu-
 “ lent intention; or shall willingly aid, abet, assist, hire,
 “ or command any person or persons to commit such offence
 “ or offences as aforesaid, such offenders shall suffer death
 “ without clergy.”

† *Secl.* 6. And it is also enacted, “ That the ma-
 “ nagers and directors, or any two or more of them,
 “ are authorised, required and impowered to cause any
 “ person or persons bringing or uttering such forged or
 “ counterfeit ticket or tickets, certificate or certificates,
 “ as aforesaid; or aiding, abetting, assisting, hiring or
 “ commanding any person or persons therein; to be ap-
 “ prehended, and to commit him, her, or them to *Newgate*,
 “ or to the county gaol.—And offenders (not in prison)
 “ discovering persons guilty, are intitled to a reward of fifty
 “ pounds, and a pardon.”

As to THE FOURTH POINT, *viz.* The forging of *post fines*.

† *Secl.* 7. By 32. Geo. 2. c. 14. s. 9. “ Whoever
 “ shall forge or counterfeit the mark or hand of the receiver
 “ of the post fines due to the crown or its grantees, whereby
 “ such receiver shall be defrauded, or any other person suffer
 “ loss, or shall procure the same to be done, shall suffer
 “ death without clergy.”

As to THE FIFTH POINT, *viz.* The forging of a *marriage register*.

Persons con-
 victed of mak-
 ing a false en-
 try, or of forg-
 ing, &c. any
 such entry,

or of forging,
 &c. any li-
 cence,

† *Secl.* 8. By 26. Geo. 2. c. 33. s. 16. it is enacted,
 “ That if any person shall, with intent to elude the
 “ force of this act, knowingly and wilfully insert, or cause
 “ to be inserted in the register book of such parish or
 “ chapelry as aforesaid, any false entry of any matter or
 “ thing relating to any marriage; or falsely make, alter,
 “ forge or counterfeit, or cause or procure to be falsely
 “ made, altered, forged, or counterfeited, or act or assist in
 “ falsely making, altering, forging or counterfeiting any
 “ such entry in such register; or falsely make, alter, forge
 “ or counterfeit, or cause or procure to be falsely made,
 “ altered, forged or counterfeited, or assist in falsely mak-
 “ ing, altering, forging or counterfeiting any such licence
 “ of

“ of marriage as aforesaid ; or utter or publish as true any
 “ such false, altered, forged or counterfeited register as
 “ aforesaid, or a copy thereof, or any such false, altered,
 “ forged or counterfeited licence of marriage, knowing
 “ such register or licence of marriage, respectively, to be
 “ false, altered, forged or counterfeited ; or if any per-
 “ son shall wilfully destroy, or cause or procure to be
 “ destroyed, any register book of marriages, or any part or of destroy-
 “ of such register book, with intent to avoid any marriage, ing such
 “ or to subject any person to any of the penalties of this register,
 “ act ; every person so offending, and being thereof law-
 “ fully convicted, shall be deemed and adjudged to be guilty to suffer death.
 “ of felony, and shall suffer death as a felon, without bene-
 “ fit of clergy.”

As to THE SIXTH POINT, *viz.* The forging *stamps*, I shall consider the same,

1. As it respects stamps on silks, paper, callicoos, &c.

2. As it respects *English* callicoos.

3. As it respects gold and silver plate.

As to THE FIRST PARTICULAR, *viz.* The offence of forging stamps on silks, paper, callicoos, &c.

† *Seet.* 9. By 13. Geo. 3. c. 56. s. 5. it is enacted, “ That if any person or persons whatsoever shall,
 “ at any time or times hereafter, counterfeit or forge
 “ any stamp or seal already provided by the said com-
 “ missioners, or which shall hereafter be by them provided,
 “ renewed, or altered, or shall counterfeit or resemble the
 “ impression of the same, upon any of the said commodi-
 “ ties chargeable by the said acts, thereby to defraud his
 “ majesty, his heirs or successors, of any of the said duties
 “ thereby granted; then every such person so offending,
 “ being thereof convicted in due form of law, shall be ad-
 “ judged a felon, and shall suffer death, as in cases of felony
 “ without benefit of clergy.” Persons counterfeiting stamps or seals, to be punished as felons without benefit of clergy.

As to THE SECOND PARTICULAR, *viz.* The offence of forging the stamps on *English* callicoos.

† *Seet.* 10. By 14. Geo. 3. c. 72. s. 8. it is enacted, “ That the respective commissioners to be appointed for managing the said duty, upon the said new-manu-
 “ factured cotton stuffs, when printed, stained, painted, or
 “ dyed in *Great Britain* as aforesaid, shall provide proper
 “ seals Commissioners to provide seals or stamps.

Persons counterfeiting stamps to suffer death.

“ seals or stamps, for marking such of the said new-
 “ manufactured cotton stuffs to be printed, stained, paint-
 “ ed, or dyed in *Great Britain* as aforesaid, as are to be
 “ stamped and marked, for and in order to the charging
 “ of the said duty for the same; and shall cause the said
 “ seals or stamps to be distributed to the respective officers
 “ for the several purposes before mentioned; which officers
 “ are hereby enjoined and required, in using the same, to
 “ do as little hurt or damage as may be to the stuffs to be
 “ so marked or stamped: and the said respective com-
 “ missioners, in providing the said respective seals or
 “ stamps, shall take care that they be so contrived that
 “ the impression thereof may be durable, and so as the same
 “ may be least liable to be forged or counterfeited; and
 “ that the said seals or stamps, or any of them, shall or
 “ may be allowed or renewed, from time to time, as his
 “ majesty, his heirs or successors, shall think fit: and
 “ if any person or persons whomsoever shall, at any time
 “ or times hereafter, counterfeit or forge any stamp or
 “ seal, to resemble any stamp or seal which shall be pro-
 “ vided or made in pursuance of this act, or shall coun-
 “ terfeit or resemble the impression of the same upon any
 “ of the stuffs chargeable by this act, thereby to defraud
 “ his majesty, his heirs or successors, of the said duty
 “ thereupon to be chargeable or payable in respect thereof,
 “ then every such person so offending, and being thereof
 “ convicted in due form of law, shall be adjudged a felon,
 “ and shall suffer death, as in cases of felony without bene-
 “ fit of clergy.”

As to THE THIRD PARTICULAR, *viz.* The offence of forging the stamps on gold and silver plate.

Fineness of gold and silver wares limited.

† *Stat. 11.* By 12. Geo. 2. c. 26. s. 1. “ No gold-
 “ smith, silversmith, or other person whatsoever, making,
 “ trading, or dealing in gold or silver wares, within that
 “ part of *Great Britain* called *England*, shall work or make,
 “ or cause or procure to be wrought or made, any gold
 “ vessel, plate, or manufacture of gold whatsoever, less in
 “ fineness than twenty-two carraets of fine gold in every
 “ pound weight troy; nor work or make, or cause or
 “ procure to be wrought or made any silver vessel, plate, or
 “ manufacture of silver whatsoever, less in fineness than
 “ eleven ounces two penny weight of fine silver, in every
 “ pound weight troy; nor sell, exchange, or expose to
 “ sale, or export out of this kingdom, any gold vessel,
 “ plate, or manufacture of gold whatsoever, less in fine-
 “ ness than twenty-two carraets of fine gold in every
 “ pound weight troy; nor sell, exchange, or expose to
 “ sale,

“ sale, or export out of this kingdom, any silver vessel,
 “ plate, or manufacture of silver whatsoever, less in fine-
 “ ness than eleven ounces two penny weight of fine silver
 “ in every pound weight troy ; upon pain that every such
 “ goldsmith, silversmith, or other person, for every such
 “ offence shall forfeit and pay the sum of ten pounds, to
 “ be recovered and disposed of as herein-after is mention-
 “ ed ; and for default of payment the offender shall be com-
 “ mitted by the Court, in which judgment shall be given
 “ thereon, to the house of correction for the county
 “ city, or liberty where convicted ; there to remain, and be
 “ kept to hard labour, for any time not exceeding the space
 “ of six months, or until payment be made of the said for-
 “ feiture.”

† *Stat. 12.* By 12. Geo. 2. c. 26. s. 5. “ it is enacted, Penalty on
 “ That no goldsmith, silversmith, or other person what- selling or ex-
 “ soever, making or selling, trading or dealing in, gold or porting gold
 “ silver wares, shall sell, exchange, or expose to sale, with- or silver wares
 “ in that part of *Great Britain* called *England*, any gold before mark-
 “ or silver vessel, plate, or manufacture of gold or silver ed.
 “ whatsoever, or export the same out of this kingdom,
 “ until such time as such vessel, plate, or manufacture of
 “ gold (being of the standard of twenty-two carraets of
 “ fine gold *per* pound troy), and such vessel, plate, or
 “ manufacture of silver (being of the standard of eleven
 “ ounces two penny weight of fine silver *per* pound troy)
 “ shall be marked as followeth ; that is to say, with the
 “ mark of the worker or maker thereof, which shall be
 “ the first letters of his christian and surname, and with
 “ these marks of the said company of goldsmiths in *London*,
 “ *viz.* the leopard’s head, the lion passant, and a distinct
 “ variable mark or letter to denote the year in which such
 “ plate shall be made ; or with the mark of the worker or
 “ maker, and with the marks appointed to be used by the
 “ assayers at *York, Exeter, Bristol, Chester, Norwich*, or
 “ *Newcastle upon Tyne* ; or plate (being of the standard of
 “ eleven ounces ten penny weight of fine silver *per* pound
 “ weight troy) with the mark of the worker or maker
 “ thereof, which shall be the first letters of his christian
 “ and surname as aforesaid, and with these marks of the
 “ said company, *viz.* the lion’s head erased, the figure
 “ of a woman, commonly called *Britannia*, and the said
 “ mark or letter to denote the year as aforesaid ; or with
 “ the mark of the worker or maker, and the marks of one
 “ of the said cities or towns ; upon pain that every such
 “ goldsmith, silversmith, and other person, for every such
 “ offence shall forfeit and pay the sum of ten pounds, to
 “ be recovered and disposed of as herein after is mention-
 “ ed ;

“ ed ; and for default of payment, shall be committed by
 “ the court in which judgment shall be given thereon,
 “ to the house of correction for the county, city, or li-
 “ berty where convicted, there to remain and be kept to
 “ hard labour for any time not exceeding the space of
 “ six months, or until payment be made of the said for-
 “ feiture.”

Goldsmiths,
 &c. shall send
 to the assay-
 office, with
 every parcel
 of gold or
 silver, a writ-
 ten note.

† *Secl.* 13. By 24. Geo. 3. c. 53. s. 4. it is further
 enacted, “ That every working goldsmith and silversmith,
 “ or other manufacturer of gold or silver whatsoever, who
 “ shall at any time or times work or make, or cause to be
 “ wrought or made, any gold or silver vessel, plate or
 “ manufacture of gold or silver whatsoever, required to be
 “ touched, assayed, and marked, by the company of gold-
 “ smiths in *London*, or the company of goldsmiths in
 “ *Edinburgh*, or by the *Birmingham* or *Sheffield* companies, or by
 “ the wardens and assayer or assayers at *York, Exeter, Bristol,*
 “ *Chester, Norwich,* and *Newcastle upon Tyne*, shall from
 “ time to time send, with every parcel of such gold or
 “ silver, to the assay-office of the said respective companies,
 “ cities, and places, a note or memorandum fairly writ-
 “ ten ; containing the day of the month and year, the
 “ christian and surname of the worker or maker, and place
 “ of his or her abode, and also all the species in such
 “ parcel of plate, and the number of each species, with
 “ the total weight of such parcel, and also the sum of
 “ money payable for the duty upon the total weight of
 “ such parcel ; and also shall from time to time send, de-
 “ liver and pay, with every such parcel, to the officer be-
 “ longing to such respective assay-office who shall receive
 “ such parcel of gold or silver so sent to be touched,
 “ assayed, and marked, the duty by this act directed to be
 “ paid upon every such parcel of gold or silver so required
 “ to be touched, assayed, and marked.”

Particulars to
 be specified
 therein.

Plate how to
 be marked.

† *Secl.* 14. By 24. Geo. 3. c. 53. s. 5. it is further
 enacted, “ That the wardens, or their deputy assay-master,
 “ weigher, or other person appointed by the said respect-
 “ v^e companies, or assay-officers, shall mark with the follow-
 “ ing new mark, that is to say, with the mark of the
 “ king’s head, over and besides the several other marks di-
 “ rected by law, all and every such pieces or parcels of
 “ gold or silver plate so sent to be touched, marked, and
 “ assayed ; and shall, previous to the touching, marking,
 “ or assaying such gold or silver plate or manufacture,
 “ ask, demand and receive, for the use of his majesty, his
 “ heirs and successors, of and from the person or persons
 “ whose property is so required to be touched, marked,
 “ and

Duties to be
 paid previous
 to the mark-
 ing.

“ and assayed, the sum of eight shillings for every ounce of gold plate, or manufacture of gold, and so in proportion for any greater or less quantity, which shall be brought to the said respective assay-offices to be touched, marked, and assayed as aforesaid: and also the sum of sixpence for every ounce of silver plate or manufacture of silver, and so in proportion for any greater or less quantity which shall be brought to the said respective assay-offices to be touched, marked, and assayed as aforesaid; and shall give a receipt for the duty so paid to the person or persons bringing such plate or manufacture; and in default of receiving such duty, in manner aforesaid, such respective companies or assay-offices so touching, marking, or assaying such plate, shall be accountable to his majesty, his heirs and successors, for the said duty, as if the same had actually been by them received.”

Receipts to be given for the duty.

† *Seff.* 15. By 24. Geo. 3. c. 53. s. 6. it is further enacted, “ That the assay-master, weigher, or other officer of the said respective companies or assay-offices, who shall, from time to time, take and receive the said monies and duties, with the said notes or memorandums, shall daily, as soon as he shall have entered the same in the book or books of the said respective companies or assay-offices, deliver the said notes or memorandums, and pay the said sums of money and duties so by him received, to the clerk or accountant of the said respective companies or assay offices, who shall file the said notes or memorandums, and enter the same, and keep a true and faithful account in writing, in books to be kept for that particular purpose, of the duties received by him under and by virtue of this act; which said account shall at all times be open for the inspection of any person or persons duly authorised under the hands and seals of the said commissioners of the stamp-duties, or the major part of them, to inspect the same.”

Assay-masters, &c. to pay the duties and deliver the notes they receive, daily, to the clerk or accountant, &c.

† *Seff.* 16. It has been held, that if an indictment on these statutes describe the forged stamp to be a *lion rampant*, and the stamp in the silver produced in evidence be a *lion passant*, the evidence will not maintain the indictment.

Charles Lee's Case, Old Bailey, May Seff. 1786, Cases C. L. 323.

† *Seff.* 17. It is also decided, that forging an order for the redelivery of plate delivered by a silversmith to the goldsmiths company, for the purpose of being marked pursuant to the above statutes, is a capital offence within 12. Geo. 2. c. 26.

Jones' Case, Cases C. L. 57.

As to THE SEVENTH POINT, viz. Forging the signature of the accountant-general,

Forging the hand of the accountant, to a certificate to receive suitors effects in the bank, or any *East-India* or *South-Sea* bond, is felony without clergy.

† *Stat.* 18. By 12. Geo. 1. c. 32. s. 9. it is enacted, "That if any person or persons shall forge or counterfeit, or procure to be forged or counterfeited, or willingly act or assist in the forging or counterfeiting the name or hand of the said accountant-general, the said register, the said clerk of the report-office, or any of the cashiers of the said governor and company of the bank of *England*, to any certificate, report, entry, indorsement, declaration of trust, note, direction, authority, instrument or writing whatsoever, for or in order to the receiving or obtaining any the money or effects of any of the suitors of the said court of chancery, or shall forge or counterfeit, or procure to be forged or counterfeited, or wilfully act or assist in forging or counterfeiting any certificate, report, entry, indorsement, declaration of trust, note, direction, authority, instrument or writing in form of a certificate, report, entry, indorsement, declaration of trust, note, direction, authority, instrument or writing, made by such accountant-general, register, clerk of the report-office, or any of the cashiers of the said governor and company of the bank of *England*, or any bond or obligation under the common seal of the united company of merchants of *England* trading to the *East-Indies*, or any indorsement or assignment thereon, or on any bond or obligation under the common seal of the governor and company of merchants of *Great Britain* trading to the *South Seas* and other parts of *America*, and for encouraging the fishery; or shall utter or publish any such, knowing the same to be forged or counterfeited, with intention to defraud any person whatsoever; then every such person and persons so offending (being thereof lawfully convicted) shall be and is hereby declared and adjudged to be guilty of felony, and shall suffer death as in case of felony without benefit of clergy."

Gibson's Case, Cases C.L. 58.

† *Stat.* 19. It hath been decided, that forging an office copy of the accountant-general's certificate is within the penalty of the above statute.

As to THE EIGHTH POINT, viz. Forging the seal of the *South-Sea* company.

Felony to counterfeit company's common seal or bonds.

† *Stat.* 20. By 9. Ann. c. 21. s. 57. it is enacted, "That if any person or persons shall forge or counterfeit the common seal of the said company, or shall forge, "coun-

“ counterfeit, or alter any bond or obligation under the
 “ common seal of the said company, or shall offer to dis-
 “ pose of or pay away any such forged, counterfeited, or
 “ altered bond (knowing the same to be such), or shall
 “ demand the money therein contained or pretended to be
 “ due thereon, or any part thereof, of the said company, or
 “ any of their officers (knowing such bond or obligation to
 “ be forged, counterfeited or altered), with intent to de-
 “ fraud the said company, or their successors, or any
 “ other person or persons whatsoever; every such person
 “ and persons so offending (and being convicted thereof
 “ in due form of law) shall be guilty of felony, and
 “ shall suffer death as a felon, without benefit of clergy.”

† *Sec. 21.* By 12. Geo. 1. c. 32. s. 9. “ If any person
 “ or persons shall forge or counterfeit, or procure to be
 “ forged or counterfeited, or willingly act or assist in the
 “ forging or counterfeiting any bond or obligation under
 “ the common seal of the governor and company of mer-
 “ chants of *Great Britain* trading to the *South Seas*, and
 “ other parts of *America*, or any indorsement or assign-
 “ ment thereon; or shall utter or publish any such, know-
 “ ing the same to be forged or counterfeited, with inten-
 “ tion to defraud any person whatsoever; then every such
 “ person and persons so offending (being thereof lawfully
 “ convicted) shall be adjudged guilty of felony without
 “ benefit of clergy.”

AS TO THE NINTH POINT, *viz.* Forging *East-India*
 bonds, &c.

† *Sec. 22.* By 12. Geo. 1. c. 32. s. 9. “ If any person
 “ or persons shall forge or counterfeit, or procure to be
 “ forged or counterfeited, or willingly act or assist in the
 “ forging or counterfeiting any bond or obligation under
 “ the common seal of the united company of merchants
 “ of *England* trading to the *East Indies*, or any indorse-
 “ ment or assignment thereon, or shall utter or publish
 “ any such, knowing the same to be forged and counter-
 “ feited with intention to defraud any person whatsoever;
 “ then every such person and persons so offending (being
 “ thereof lawfully convicted) shall be and is hereby declared
 “ and adjudged to be guilty of felony, and shall suffer death
 “ as in case of felony without benefit of clergy.”

As to THE TENTH POINT, *viz.* Forging with intent to defraud a proprietor of stock.

† *Stat. 23.* By 8. Geo. I. c. 22. IT IS ENACTED, " That of late divers frauds and abuses have been committed by forging and counterfeiting the hands of some of the proprietors of the shares of and in the capital stock and funds of such body or bodies politic or corporate, as are established by act or acts of parliament in that behalf, or some of them, or by forging or counterfeiting the hands of persons entitled to the dividends attending the said shares, or some of them, or by forging or counterfeiting the hands of persons entitled to annuities, in respect whereof the proprietors have transferrable shares in a capital stock or stocks established by act or acts of parliament, in proportion to their respective annuities: and divers frauds and abuses have been or may be committed by persons falsely and deceitfully personating the true and real proprietors of the said shares in stock, annuities and dividends, or some of them:" Now for the better preventing such pernicious practices for the future, it is ENACTED, " That if any person or persons whatsoever shall forge or counterfeit, or procure to be forged or counterfeited, or knowingly and wilfully act or assist in the forging or counterfeiting any letter of attorney, or other authority or instrument to transfer, assign, sell or convey any such share or shares, or any part of such share or shares of and in such capital stock or stocks as aforesaid, or any of them, or to receive any such annuity or annuities, dividend or dividends as aforesaid, or any of them, or any part thereof, or shall forge or counterfeit, or procure to be forged or counterfeited, or knowingly and wilfully act or assist in the forging or counterfeiting any the name or names of any the proprietors of any such share or shares in stock, or of any the persons entitled to any such annuity or annuities, dividend or dividends as aforesaid, in or to any such pretended letter of attorney, instrument or authority, or shall knowingly and fraudulently demand, or endeavour to have any such share or shares in stock, or any part thereof, transferred, assigned, sold or conveyed, or such annuity or annuities, dividend or dividends, or any part thereof, to be received by virtue of any such counterfeit or forged letter of attorney, authority or instrument, or shall falsely and deceitfully personate any true and real proprietors of the said shares in stock, annuities and dividends, or any of them, or any part thereof, and thereby transferring or endeavouring to transfer the stock, or receiving or endeavouring to receive the money of such true and lawful proprietor, as if such offender were the
" true

Forging letters of attorney, &c.

or counterfeiting names of proprietors, &c.

or falsely personating real proprietors of shares, &c. felony.

“ true and lawful owner thereof ; then and in every or
 “ any such case, all and every such person and persons
 “ (being thereof lawfully convicted in due form of law)
 “ shall be adjudged guilty of felony, and shall suffer as in
 “ cases of felony without benefit of clergy.

† *Seft.* 24. By 31. Geo. 2. c. 22. f. 77. IT IS RECITED, Penalty in the recited act,
 “ That doubts may arise whether the punishment inflicted &c. extended to this act, &c.
 by 8. Geo. 1. c. 22. on persons guilty of the several species
 of forgery, and other offences therein mentioned, extends
 to the commission of the like forgery and offences in re-
 lation to such capital stocks and funds as have been esta-
 blished by the authority of parliament, since the passing of
 the said act, and may be hereafter established ;” therefore
 it is ENACTED, “ That if any person or persons whatso-
 ever shall forge or counterfeit, or procure to be forged
 “ or counterfeited, or knowingly and wilfully act or assist in
 “ the forging or counterfeiting any letter of attorney, or
 “ other authority or instrument, to transfer, assign, sell
 “ or convey any share or shares, or any part of any
 “ share or shares, of or in any such capital stock or
 “ funds of any body or bodies politic or corporate esta-
 “ blished, or which shall be established, by any act or
 “ acts of parliament ; or to receive any dividend or divi-
 “ dends attending any share or shares, or any part of any
 “ share or shares, of or in any such capital stock or funds
 “ as aforesaid ; or to receive any annuity or annuities, in
 “ respect whereof any proprietor or proprietors have or
 “ shall have any transferrable share or shares of or in any
 “ capital stock or stocks which now are, or hereafter shall
 “ be established by any act or acts of parliament, in pro-
 “ portion to their respective annuities ; or shall forge or
 “ counterfeit, or procure to be forged or counterfeited,
 “ or knowingly and wilfully act or assist in the forging or
 “ counterfeiting any the name or names of any the pro-
 “ prietors of any such share or shares in stock, or of any
 “ the persons intitled to any such annuity or annuities,
 “ dividend or dividends, as aforesaid, in or to any such pre-
 “ tended letter of attorney, instrument or authority ; or
 “ shall knowingly or fraudulently demand, or endeavour
 “ to have any such share or shares in stock, or any part
 “ thereof, transferred, assigned, sold or conveyed, or such an-
 “ nuity of annuities, dividend or dividends, or any part there-
 “ of, to be received by virtue of any such counterfeit
 “ or forged letter of attorney, authority or instrument ;
 “ or shall falsely and deceitfully personate any true and real
 “ proprietors of the said shares in stock, annuities and divi-
 “ dends, or any of them, or any part thereof, and thereby
 “ transferring or endeavouring to transfer the stock, or

“ receiving, or endeavouring to receive the money of such
 “ true and lawful proprietor, as if such offender were the
 “ true and lawful owner thereof; then, and in every or
 “ any such case, all and every such person and persons, be-
 “ ing thereof lawfully convicted in due form of law, shall be
 “ deemed guilty of felony, and suffer death as a felon, with-
 “ out benefit of clergy.”

Penalty of
 forging power
 to transfer
 any stock; or
 to receive any
 dividends or
 annuities
 thereon; or
 the fraudulent
 personating
 the owners
 thereof;

+ *Stat. 25.* By 4. Geo. 3. c. 25. s. 15. IT IS RECITED,
 “ That it is necessary that provision should be made for more
 “ effectually preventing the forging powers to transfer any
 “ such stock, or to receive such dividends or annuities, as are
 “ hereinafter mentioned, and the fraudulent personating the
 “ owners thereof;” and therefore IT IS ENACTED, “ That
 “ if any person or persons whatsoever shall forge or
 “ counterfeit, or procure to be forged or counterfeited,
 “ or knowingly and wilfully act or assist in the forging or
 “ counterfeiting any letter of attorney, or other authority
 “ or instrument, to transfer, assign, sell or convey, any
 “ share or shares, or any part of any share or shares, of
 “ and in any capital stock or stocks of any body or bo-
 “ dies politic or corporate, which now are, or hereafter
 “ shall be, established by any act or acts of parliament;
 “ or any share or shares, or any part of any share or shares,
 “ of and in any annuities in respect whereof the pro-
 “ prietors of such annuities have or shall have transferra-
 “ ble shares in any capital stock or stocks now established,
 “ or which shall hereafter be established by any act or
 “ acts of parliament, in proportion to their respective
 “ annuities; or any share or shares, or any part of any
 “ share or shares, of or in any other transferrable an-
 “ nuities, which now are or hereafter shall be established by
 “ any act or acts of parliament; or to receive any such an-
 “ nuity or annuities, or any dividend or dividends attend-
 “ ing such shares, or any of them, or any part thereof; or
 “ shall forge or counterfeit, or procure to be forged or
 “ counterfeited, or knowingly and wilfully act or assist in
 “ the forging or counterfeiting, any the name or names of
 “ any the proprietors of any such share or shares in
 “ stock, or of any the persons intitled to any such an-
 “ nuity or annuities, dividend or dividends as aforesaid,
 “ in or to any such pretended letter of attorney, instru-
 “ ment or authority; or shall knowingly and fraudulently
 “ demand, or endeavour to have any such share or shares
 “ in stock or annuities, or any part thereof, transferred,
 “ assigned, sold, or conveyed, or such annuity or annui-
 “ ties, dividend or dividends, or any part thereof, to be
 “ received by virtue of any such counterfeit or forged
 “ letter of attorney, authority, or instrument; or shall
 “ falsly

“ falsly and deceitfully personate any true and real proprietor of the said shares in stock, annuities and dividends, or any of them, or any part thereof, and thereby transferring or endeavouring to transfer the stock or annuities, or receiving or endeavouring to receive, the money of such true and lawful proprietor, as if such offender were the true and lawful owner thereof; then, and in every or any such case, all and every such person and persons (being thereof lawfully convicted, in due form of law) shall be adjudged guilty of felony, and shall suffer as in cases of felony without benefit of clergy.”

is felony
without benefit
of clergy.

† *Stat. 26.* By 33. Geo. 3. c. 30. s. 1. it is enacted, “ That if any person or persons shall wilfully make, or assist in making, any transfer of any interest, part, or share of or in any stock or stocks, annuity or annuities, or other funds, transferrable at the bank of *England*, in any of the books of the said governor and company of the bank of *England*, in which transfers of stock, annuities, or other funds, as aforesaid, are made, in the name or names of any person or persons not being the owner or owners, or proprietor or proprietors, of such stock, annuities, or other funds, transferrable as aforesaid, with intent to defraud the said governor and company of the bank of *England*, or any other body politic or corporate, or any person or persons whatsoever, such person or persons so making, or assisting in making such transfer as aforesaid, shall be deemed guilty of felony, and shall suffer death as a felon or felons, without benefit of clergy.”

Persons making, or assisting in making transfers of stock in any other names than the owners, guilty of felony;

† *Stat. 27.* By 33. Geo. 3. c. 30. s. 2. it is further enacted, “ That if any person or persons whatsoever shall falsly make, forge, or counterfeit, or cause or procure to be falsly made, forged, or counterfeited, or shall willingly act or assist in the falsly making, forging or counterfeiting of any transfer of any interest, part, or share of or in any stock or stocks, annuity or annuities, or other funds, transferrable, or which, by any act or acts of parliament, shall hereafter be made transferrable, at the bank of *England*, or of or in the capital stock belonging, or which hereafter shall or may belong to the said governor and company of the bank of *England*, called *bank stock*, or shall utter or publish as true any such false, forged, or counterfeited transfer as aforesaid, knowing the same to be false, forged, or counterfeited, with intent to defraud the said governor and company of the bank of *England*, or any other body politic or corporate, or any person or persons

also persons forging, or assisting in forging, transfers &c.

“ whatsoever ; all and every person or persons whatsoever so
 “ offending shall be deemed guilty of felony, and shall suffer
 “ death as a felon or felons, without benefit of clergy.”

As to THE ELEVENTH POINT, viz. Forging with intent
 to defraud the lords of the admiralty.

Counterfeit-
 ing Mediter-
 ranean passes,
 felony with-
 out benefit of
 clergy.

† *Stat.* 28. By 4. Geo. 2. c. 18. it is enacted, “ That
 “ if any person or persons shall within *Great Britain* or
 “ *Ireland*, or any other his majesty’s dominions, or with-
 “ out, falsly make, forge, or counterfeit, or cause or pro-
 “ cure to be falsly made, forged or counterfeited, or wit-
 “ tingly or knowingly act or assist in the falsse making,
 “ forging or counterfeiting any pass or passes, for any
 “ ship or ships whatsoever, commonly called a *Mediterr-*
 “ *ranean pass* or *Mediterranean passes*, or shall counterfeit
 “ the seal or the said office, or the hand or hands of the
 “ lord high admiral of *Great Britain* and *Ireland* for the
 “ time being, or of any commissioner or commissioners for
 “ executing the said office for the time being, to any such
 “ pass or passes, or shall alter or erase any true and au-
 “ thentic pass or passes issued or made out by the lord high
 “ admiral of *Great Britain* and *Ireland*, or the commis-
 “ sioners for executing the said office for the time being, or
 “ shall utter or publish as true any such false, forged,
 “ counterfeited, altered or erased pass or passes, knowing
 “ the same to be false, forged, counterfeited, altered or
 “ erased, all and every such person and persons, being in
 “ due form of law convicted of any of the offences aforesaid
 “ in any proper court of *Great Britain*, *Ireland*, or any of
 “ his majesty’s plantations beyond the seas, where such
 “ offence shall be committed respectively, shall be adjudged
 “ guilty of felony, and shall suffer death as in cases of felony
 “ without benefit of clergy.”

These crimes
 committed in
 his majesty’s
 dominions, or
 without, may
 be tried in any
 shire of *Great*
Britain, &c.

† *Stat.* 29. By 4. Geo. 2. c. 18. s. 2. it is provided,
 “ That all and every the crimes and offences before-men-
 “ tioned, which shall be done or committed in any coun-
 “ try or place out of *Great Britain*, either within the do-
 “ minions of his majesty, his heirs or successors, or with-
 “ out, shall and may be inquired of, tried, heard, deter-
 “ mined and adjudged in any shire or county of *Great*
 “ *Britain*, by virtue of the king’s commission or com-
 “ missions of *oyer* and *terminer* and gaol-delivery, or be-
 “ fore any court of justiciary in *Scotland* respectively, in
 “ the same manner as if such offence or offences was or
 “ were done or committed within the same county or
 “ shire where such offender or offenders shall be tried ;
 “ any

“any law, statute, custom or usage to the contrary notwithstanding.”

As to THE TWELFTH POINT, viz. Forging with intent to defraud seamen belonging to King's ships.”

† *Stat.* 30. By 31. Geo. 2. c. 10. s. 24. IT IS RECITED, Penalty of personating seamen, or of forging letters of attorney, &c. or making a false oath to obtain probate of any will, &c. of such persons, is death.

“That divers wicked practices have been carried on, by personating and falsely assuming the names and characters of officers, seamen and others, intitled, or supposed to be intitled to wages, pay or other allowances of money, or prize money, for serving on board of ships or vessels of the royal navy, and by forging and counterfeiting letters of attorney, bills, tickets, assignments, last wills and other authorities and powers from such officers and seamen, and by falsely taking out probate of wills and letters of administration to such officers and seamen :” and therefore it is ENACTED, “That whosoever willingly and knowingly

“shall personate, or falsely assume the name or character of,

“or procure any other to personate, or falsely to assume the

“name or character of any officer, seaman or other person, intitled, or supposed to be intitled, to any wages,

“pay, or other allowances of money, or prize money, for

“service done on board of any ship or vessel of his majesty, his heirs or successors ; or the executor or administrator, wife, relation or creditor of any such officer or

“seaman, or other person, in order to receive any wages,

“pay, or other allowances of money, or prize money, due, or supposed to be due or payable, for or on account

“of the services of any such officer or seaman, or other person as aforesaid ; or shall forge or counterfeit, or procure to be forged or counterfeited, any letter of attorney,

“bill, ticket, certificate, assignment, last will, or any other power or authority whatsoever, in order to receive any

“such wages, pay, or other allowances of money, or prize money due, or supposed to be due, to any such

“officer or seaman, or other person as aforesaid ; or shall

“willingly and knowingly take a false oath, or procure any

“other person to take a false oath, to obtain the probate

“of any will or wills, or to obtain letters of administration, in order to receive the payment of any wages, pay,

“or other allowances of money, or prize money due, or that were supposed to be due, to any such officer, seaman,

“or other person, as aforesaid, who has really served, or was supposed to have served on board of any ship or

“vessel of his majesty, his heirs or successors ; every such

“person so offending, being lawfully convicted of any

“such offence or offences, shall be deemed guilty of felony,

“and

“ and shall suffer death as a felon, without benefit of clergy.”

Penalty of uttering any forged letter of attorney, &c. to obtain any wages, &c. perjury as well as forgery, is a capital offence, by 31. Geo. 2. c. 20. s. 24.

† *Seft.* 31. By 9. Geo. 3. c. 30. s. 6. it is enacted, “ That if any person shall utter or publish as true, any false, forged, or counterfeited letter of attorney, bill, ticket, certificate, assignment, last will, or any other power or authority whatsoever, in order to receive any wages, pay, or other allowances of money, or prize money, due or supposed to be due to any officer or seaman, or other person, who has really served or was supposed to have served, or who shall hereafter serve or be supposed to have served, on board of any ship or vessel of his majesty, his heirs or successor, with intent to defraud any person knowing the same to be false, forged, or counterfeited, then every such person, being thereof lawfully convicted, shall be deemed guilty of felony, and shall suffer death as a felon without benefit of clergy.”

As to THE THIRTEENTH POINT, viz. Forging with intent to defraud the *London Assurance company*, and the *Royal Exchange Assurance company*.

Forging the common seal of the corporations, or any policy, &c.

† *Seft.* 32. By 6. Geo. 1. c. 18. s. 13. it is enacted, “ That if any person or persons shall forge or counterfeit the common seal of either of the said corporations to be erected and established pursuant to this act, or shall forge, counterfeit, or alter any policy, bill, bond or obligation, under the common seal of either of the same corporations, or shall offer to dispose of or pay away any such forged, counterfeited or altered policy, bill, bond or obligation, knowing the same to be such, or shall demand the money therein contained or pretended to be due thereon, or any part thereof, of or from such of the same corporations as shall be mentioned or referred to therein, or any of their officers, knowing such policy, bill, bond or obligation, to be forged, counterfeited, or altered, with intent to defraud the same corporation, or their successors, or any other person or persons whatsoever; every such person or persons so offending, and being convicted thereof in due form of law, shall be guilty of felony and suffer as in cases of felony without benefit of clergy.”

AS TO THE FOURTEENTH POINT, *viz.* Forgery with intent to defraud the holders of *exchequer-bills*.

† *Stat. 33.* By 25. Geo. 3. c. 2. it is enacted, " That
 " if any person or persons shall forge or counterfeit
 " any exchequer-bill which shall have been made forth
 " by virtue of this act, before the same shall be paid off
 " and cancelled, or any exchequer-bills to be received or
 " made forth in pursuance of this act, or any indorse-
 " ment or writing thereupon or therein, or tender in pay-
 " ment any such forged or counterfeit bill, or any exche-
 " quer-bill with such counterfeit indorsement or writing
 " thereon, or shall demand to have such counterfeit bill, or
 " any such exchequer-bill with such counterfeit indorse-
 " ment or writing thereon or therein, exchanged for ready
 " money by any person or persons, body or bodies politic
 " or corporate, who shall be obliged or required to exchange
 " the same, or by any other person or persons whatsoever,
 " knowing the bill so tendered in payment or demanded to
 " be exchanged, or the indorsement or writing thereupon
 " or therein to be forged or counterfeited, and with intent
 " to defraud his majesty, his heirs and successors, or the
 " persons to be appointed to pay off the same, or any of
 " them, or to pay any interest thereupon, or the person or
 " persons, body or bodies politic or corporate, who shall
 " contract to circulate or exchange the same, or any of them,
 " or any other person or persons, body or bodies politic or
 " corporate, then every such person or persons so offend-
 " ing, being thereof lawfully convicted, shall be adjudged a
 " felon, and shall suffer as in cases of felony without benefit
 " of clergy."

† *Stat. 34.* By 9. Geo. 1. c. 12. for the more easy trans- *Vide also*
 " transferring certain exchequer annuities, " Whoever shall forge 4. Geo. 2. c. 9.
 " or counterfeit, or shall procure, &c. or aid in the forging 9. Geo. 2. c. 34.
 " or counterfeiting any order made forth in pursuance 11. Geo. 2.
 " of this act, or of the 6. Geo. 1. c. 11. 6. Geo. 1. c. 17. c. 27.
 " 7. Geo. 1. c. 30. 8. Geo. 1. c. 25. or any assignment
 " of such order, or of the annuities payable thereon, or
 " of any receipt or discharge to the exchequer for the an-
 " nuities due, or to grow due on such order, or any
 " authority to transfer such order or annuities, or shall
 " forge, &c. the name of any of the proprietors, &c. or
 " shall endeavour to receive such annuities, or any part
 " thereof, by virtue of such forged authority, or shall
 " personate any true and real proprietor of the said or-
 " ders, and receiving, or endeavouring to receive the mo-
 " ney of such proprietor, as if such offender were the true
 " and

“ and lawful owner thereof, shall be guilty of felony without benefit of clergy.”

As to THE FIFTEENTH POINT, *viz.* Forging with intent to defraud the governor and company of the *bank of England*.

I shall consider it as it relates,

1. To forging the common seal of the bank of *England*.
2. To forging bank notes, bank bills, &c.
3. To counterfeiting bank paper.
4. To forgery and fraud in making transfers.

As to the first particular, *viz.* Forging the common seal of the governor and company of the *bank of England*.

† *Stat.* 35. By 8. and 9. Will. 3. c. 20. s. 36. it is enacted, “ That the forging or counterfeiting the common seal of the said corporation of the governor and company, or of any sealed bank bill made or given out in the name of the said governor and company for the payment of any sum of money, is felony without benefit of clergy.”

† *Stat.* 36. By 15. Geo. 2. c. 13. s. 11. “ If any person or persons shall forge, counterfeit, or alter any bond or obligation under the common seal of the said company, or any indorsement thereon, or shall offer or dispose of, or put away any such forged, counterfeited, or altered bond or obligation, or the indorsement thereon, or demand the money therein contained, or pretended to be due thereon, or any part thereof, of the said company, or any their officers or servants, knowing such bond or obligation, or the indorsement thereon, to be forged, counterfeited or altered with intent to defraud the said company or their successors, or any other person or persons whatsoever; every person or persons so offending shall be deemed guilty of felony without benefit of clergy.”

As to the second particular, *viz.* The forging of bank notes, bank bills, and dividend warrants.

† *Stat.* 37. By 8. and 9. Will. 3. c. 20. s. 36. “ The forging or counterfeiting of any bank note of any for whatsoever, signed for the governor and company of the
“ bank

“ bank of *England*, or altering or erasing any indorsement
 “ of any bank bill or note of any sort, is declared to be fe-
 “ lony without benefit of clergy.”

† *Stat.* 38. By 11. Geo. 1. c. 9. s. 6. IT IS RE-
 CITED, “ That of late divers frauds and deceits have
 been put upon the governor and company of the bank
 of *England*, and other persons, by the altering, forging and
 “ counterfeiting of the bank bills and bank-notes of the
 “ said governor and company, and by the erasing and al-
 tering the said bills and notes, and the indorsements there-
 upon, and by the tendering in payment, uttering, vending,
 exchanging and bartering, of such altered, forged, counter-
 feited and erased bills and notes, and the indorsements
 thereupon, to the prejudice of public credit, and to the
 great hurt and diminution of trade and commerce;” for
 redressing whereof for the future, it is ENACTED, “ That
 “ if any person or persons shall alter, forge or counterfeit
 “ any bank-bill or bank-note, made or given out for the
 “ payment of any sum of money, by or for the said go-
 “ vernor and company, or any bank-note of any sort
 “ whatsoever, or shall erase or alter any such bill or note,
 “ or any indorsement thereupon, or shall tender in pay-
 “ ment, utter, vend, exchange or barter, any such altered,
 “ forged or counterfeited bill or note, or any erased or al-
 “ tered bill or note, or the indorsement thereupon, or de-
 “ mand to have the same exchanged for ready money by
 “ the said governor and company, or their successors, or
 “ any other person or persons (knowing such bill or note,
 “ or the indorsement thereupon, so tendered or demanded
 “ to be exchanged, vendd or bartered, to be altered, forg-
 “ ed, counterfeited or erased) and with intention to de-
 “ fraud the said governor and company, or their succes-
 “ sors, or any other person or persons, body politic or
 “ corporate; then every such person or persons so offend-
 “ ing (being thereof lawfully convicted) shall be, and is
 “ hereby declared and adjudged a felon, and shall suffer as
 “ in cases of felony.”

Forging, &c.
 bank bills or
 notes, felony.

† *Stat.* 39. By 12. Geo. 1. c. 32. s. 9. it is enacted,
 “ That if any person or persons shall forge or counterfeit,
 “ or procure to be forged or counterfeited, or willingly
 “ act or assist in the forging or counterfeiting the name or
 “ hand of the said accountant-general, the said register, the
 “ said clerk of the report-office, or any of the cashiers of
 “ the said governor and company of the bank of *England*,
 “ to any certificate, report, entry, indorsement, declaration
 “ of trust, note, direction, authority, instrument or writ-
 “ ing

Forging the
 hand of the
 accountant to
 a certificate, &c.
 receive suitors
 effects in the
 bank,

“ ing whatsoever, for or in order to the receiving or ob-
 “ taining any the money or effects of any of the suitors of
 “ the said court of chancery, or shall forge or counterfeit,
 “ or procure to be forged or counterfeited, or wilfully act
 “ or assist in forging or counterfeiting any certificate, report,
 “ entry, indorsement, declaration of trust, note, direction,
 “ authority, instrument or writing in form of a certificate,
 “ report, entry, indorsement, declaration of trust, note,
 “ direction, authority, instrument or writing, made by
 “ such accountant-general, register, clerk of the report-
 “ office, or any of the cashiers of the said governor and
 “ company of the bank of *England*, or any bond or ob-
 “ ligation under the common seal of the united com-
 “ pany of merchants of *England* trading to the *East-*
 “ *Indies*, or any indorsement or assignment thereon, or
 “ on any bond or obligation under the common seal of the
 “ governor and company of merchants of *Great Britain*
 “ trading to the *South-Seas* and other parts of *America*;
 “ and for encouraging the fishery; or shall utter or pub-
 “ lish any such, knowing the same to be forged or
 “ counterfeited, with intention to defraud any person
 “ whatsoever; then every such person and persons so
 “ offending (being thereof lawfully convicted) shall be
 “ and is hereby declared and adjudged to be guilty of fe-
 “ lony, and shall suffer death as in cases of felony without
 “ benefit of clergy.”

or any *East-*
India or *South*
Sea bond, is
 felony with-
 out clergy.

Persons coun-
 terfeiting, or
 altering bank
 notes, &c. to
 suffer death.

† *Stat.* 40. By 15. Geo. 2. c. 13. s. 11. it is further en-
 acted, “ That if any person or persons shall forge, coun-
 “ terfeit or alter any bank-note, bank-bill of exchange,
 “ dividend warrant, or any bond or obligation un-
 “ der the common seal of the said company, or any
 “ indorsement thereon, or shall offer or dispose of or
 “ put away any such forged, counterfeit, or altered note,
 “ bill, dividend warrant, bond, or obligation, or the
 “ indorsement thereon, or demand the money therein con-
 “ tained or pretended to be due thereon, or any part
 “ thereof, of the said company, or any their officers
 “ or servants, knowing such note, bill, dividend war-
 “ rant, bond, or obligation, or the indorsement there-
 “ on, to be forged, counterfeited, or altered, with intent
 “ to defraud the said company, or their successors, or any
 “ other person or persons whatsoever; every person or
 “ persons so offending, and being thereof convicted in due
 “ form of law, shall be deemed guilty of felony, and shall
 “ suffer death as a felon, without benefit of clergy.”

† *Sect. 41.* It has been determined, that the erasing of the usual mark made at the bank of *England* across the face of a bank note to denote that it has been paid, is erasing an *indorsement* within the meaning of the statute 8. and 9. Will. 3. c. 20. Rex v. Bigg, 1. Stra. 18. S. C. 3. Peer Wms. 419.

† *Sect. 42.* It has also been determined, that the erasing and altering the word *two*, in a bank note for two hundred and twenty pounds, into the word *five*, whereby the note is made to purport to be a bank note for five hundred and twenty pounds, is clearly a forgery within the 8. and 9. Will. 3. c. 20. Rex v. Dawson, 1. Stra. 20.

† *Sect. 43.* It has also been decided, that a forged note purporting to be a bank note, although the word “pounds” is omitted in the body of it, and the paper on which it is written has not the usual *water mark*, is a sufficient counterfeiting of a note for the payment of money, to bring the offender within the above statutes. Elliot's Case, Cases Cro. Law 161.

† *Sect. 44.* But it has also been determined, that in an indictment for forgery, the words “purporting to be a bank note,” mean that the instrument *upon the face of it* appears to be a bank note; and that the want of such an appearance cannot be supplied by the representation of the party uttering it. Jones's Case, Dougl. 302. Cases Cro. Law 186.

† *Sect. 45.* It is also decided, that *the cashier* whose name is signed to a forged note “For the Governor and Company of the Bank of *England*,” is a competent witness to prove that the name so signed is not his hand-writing. Newland's Case, Cases Cro. Law 256.

As to the third particular, *viz.* The counterfeiting bank paper.

† *Sect. 46.* By 13. Geo. 3. c. 79. §. 1. IT IS RECITED, That frauds have lately been committed by forging the notes and bills of the governor and company of the bank of *England*, notwithstanding the statutes now in force for punishing and suppressing the same: and, for the more effectual preventing such practices, IT IS ENACTED, “That if any person or persons (other than the officers, workmen, servants, or agents, for the time being, of the said governor and company, to be authorised and appointed for that purpose by the said governor and company, and for the use of the said governor and company only), shall make or use, or cause or procure to be made or used, or knowingly aid or assist in the making or using; or (without being authorised and appointed as aforesaid) shall knowingly Persons making frames, &c. for forging notes of the bank of *England*, or having in their custody moulds or instruments for that purpose, adjudged guilty of felony, &c.

“ knowingly have in his, her, or their custody or possession (without lawful excuse, the proof whereof shall lie upon the person accused), any frame, mould, or instrument, for the making of paper, with the words *Bank of England* visible in the substance of such paper; or shall make, or cause or procure to be made, or knowingly aid or assist in the making any paper, in the substance of which the said words *Bank of England* shall be visible; or if any person (except as before excepted) shall, by any art, mystery, or contrivance, cause or procure the said words, *Bank of England*, to appear visible in the substance of any paper whatsoever, or knowingly aid or assist in causing the said words, *Bank of England*, to appear in the substance of any paper whatsoever; every person so offending in any of the cases aforesaid, and being thereof lawfully convicted, shall, for such offence, be deemed and adjudged a felon, and shall suffer death as in cases of felony without benefit of clergy.”

Persons engraving notes to resemble inland bills, &c.

† *Stat. 47.* By 13. Geo. 3. c. 79. s. 2. IT IS RECITED, “ That unwary and other persons have taken in payment, and otherwise received notes, inland bills, and bills of exchange, with certain words and characters so nearly resembling the notes and bills of the said governor and company, as to appear to such persons to be the notes or bills of the bank of *England*, which, if continued to be done, will be to the great prejudice of public credit:” AND ENACTED, “ That if any person or persons, without being authorised and appointed as aforesaid, shall engrave, cut, etch, or scrape in mezzotinto, or shall cause or procure to be engraved, cut, etched, or scraped in mezzotinto, or shall knowingly aid or assist in the engraving, cutting, etching, or scraping in mezzotinto, in or upon any plate of copper, brass, steel, pewter, or of any other metal or mixture of metals, or upon wood, or any other material, or any plate whatsoever, any promissory note, inland bill, or bill of exchange, or blank promissory note, inland bill, or bill of exchange, or part of a promissory note, inland bill, or bill of exchange, containing the words, *Bank of England*, or *Bank Post Bill*, or any word or words expressing the sum or amount, or any part of the sum or amount of such promissory note, inland bill, or bill of exchange, in white letters or figures on a black ground; or shall use any such plate so engraved, cut, etched, or scraped in mezzotinto, or shall use any other instrument for the making or printing any such promissory note, inland bill, or bill of exchange, or blank promissory note, inland bill, or bill of exchange, or part of a promissory note, inland bill, or bill of exchange; if any person,

“ with-

“ without being authorised and appointed as aforesaid,
 “ shall knowingly have in his, her, or their custody, any
 “ such plate or instrument, or shall knowingly and wilfully
 “ utter or publish any such promissory note, inland bill, or
 “ bill of exchange, blank promissory note, inland bill, or
 “ bill of exchange; every such person so offending in any
 “ of the cases aforesaid, and being convicted thereof ac- shall be com-
 “ cording to law, shall be committed to the common gaol mitted nor ex-
 “ of the county or place where the offence shall be com- ceeding six
 “ mitted, for any space not exceeding six months.” months.

+ *Stat.* 48. By 13. Geo. 3. c. 79. s. 3. it is provided,
 “ That nothing herein contained shall extend or be con-
 “ strued to extend, to such person or persons who being at
 “ any time hereafter possessed of any such note or bill, shall
 “ only utter the same by carrying the same for payment
 “ to the issuer or issuers, drawer or drawers, acceptor or
 “ accepters, indorser or indorsers thereof respectively, or
 “ using proper means to compel the payment of any such
 “ note or bill.”

As to the fourth particular, *viz.* Forgery and frauds in making transfers, &c.

+ *Stat.* 49. By 33. Geo. 3. c. 20. s. 1. IT IS RECITED, Persons ma-
 That the laws now in being have been found insufficient king, or assist-
 to prevent forgeries and frauds in the transferring stocks, ing in making,
 annuities, and other public funds, transferrable at the transfers of
 bank of *England*; and that, for the better preventing such stock in any
 forgeries and frauds in future, it is necessary that further other names
 provision should be made, as well to prevent frauds practised than the
 by persons taking upon themselves to make transfers, in the owners, guilty
 of felony;
 the books of the governor and company of the bank of
England, of stock or annuities, or other funds, transferrable
 as aforesaid, whereof such persons are not the true owners
 and proprietors, as to prevent forgeries of such transfers in
 the names of the true owners or proprietors: and that it is
 also necessary, the better to prevent such forgeries and frauds,
 that the public accounts between the governor and company
 of the bank of *England* and the several owners and proprie-
 tors of stock, annuities, and other funds, transferrable at
 the bank of *England*, should be secured from falsification by
 means of false entries therein, or of the alteration of any of
 the words or figures thereof, or by any other ways or means
 whatsoever:” AND ENACTED, “ That if any person or per-
 “ sons shall wilfully make, or assist in making, any transfer
 “ of any interest, part, or share of or in any stock or stocks,
 “ annuity or annuities, or other funds, transferrable at the
 “ bank of *England*, in any of the books of the said governor
 Vol. I. O o “ and

“and company of the bank of *England*, in which transfers
 “of stock, annuities, or other funds, as aforesaid are made,
 “in the name or names of any person or persons not being
 “the owner or owners, or proprietor or proprietors, of such
 “stock, annuities, or other funds, transferrable as aforesaid,
 “with intent to defraud the said governor and company
 “of the bank of *England*, or any other body politic or cor-
 “porate, or any person or persons whatsoever, such person
 “or persons so making, or assisting in making, such trans-
 “fer as aforesaid, shall be deemed guilty of felony, and
 “shall suffer death as a felon or felons, without benefit of
 “clergy.”

also persons
 forging, or
 assisting in
 forging,
 transfers, &c.

† *Sec. 50.* By 33. Geo. 3. c. 30. f. 2. it is further enacted,
 “That if any person or persons whatsoever shall falsely
 “make, forge, or counterfeit, or cause or procure to be
 “falsely made, forged, or counterfeited, or shall willingly
 “act or assist in the falsely making, forging, or counter-
 “feiting of any transfer of any interest, part, or share of or
 “in any stock or stocks, annuity or annuities, or other
 “funds, transferrable, or which, by any act or acts of parli-
 “ament, shall hereafter be made transferrable, at the bank
 “of *England*, or of or in the capital stock belonging, or
 “which hereafter shall or may belong to the said governor
 “and company of the bank of *England*, called *bank stock*;
 “or shall utter or publish as true any such false, forged, or
 “counterfeited transfer as aforesaid, knowing the same to
 “be false, forged, or counterfeited, with intent to defraud
 “the said governor and company of the bank of *England*,
 “or any other body politic or corporate, or any person or
 “persons whatsoever: all and every person or persons
 “whatsoever so offending shall be deemed guilty of felony,
 “and shall suffer death as a felon or felons without benefit
 “of clergy.”

and also per-
 sons making,
 or assisting in
 making, false
 entries in the
 books of the
 bank, &c.

† *Sec. 51.* By 33. Geo. 3. c. 30. f. 3. it is further enacted,
 “That if any person or persons shall wilfully make, or assist
 “in making, any false entry, or shall wilfully alter, or assist
 “in altering, any word or figure in any entry in the books
 “of account kept by the said governor and company of the
 “bank of *England*, wherein the several accounts of the
 “owners or proprietors of stock, annuities, or other funds,
 “transferrable at the bank of *England*, are entered and
 “kept, or shall in any manner wilfully falsify the accounts
 “of such owners and proprietors in the books of the said
 “governor and company, wherein such accounts are entered
 “and kept, with intent to defraud the said governor and
 “company of the bank of *England*, or any other body poli-
 “tic or corporate, or any person or persons whatsoever,
 “every

“ every such person or persons so offending shall be deemed guilty of felony, and shall suffer death as a felon or felons, without benefit of clergy.”

† *Sect. 52.* By 33. Geo. 3. c. 30. s. 4. IT IS RECITED, Persons making out, &c. false dividend warrants to be transported for 14 years.
 “ That in order to cover and conceal forgeries and frauds in transfers, dividend warrants have been sometimes made out for different sums than the sums really due.” AND ENACTED, “ That if any clerk, officer, or servant of, or other person or persons employed or intrusted by, the said governor and company, shall knowingly or willingly make out or deliver, or cause or procure to be made out or delivered, or willingly act or assist in the making out or delivering, of any dividend warrant for a greater or less amount than the person or persons, on whose behalf, or pretended behalf, such dividend warrants shall be made out, is or are intitled to, with intent to defraud the said governor and company of the bank of *England*, or any other body politic or corporate, or any person or persons whatsoever, all and every such person or persons so offending, and being in due form of law convicted of any such offence or offences as aforesaid, shall be transported for seven years.”

As to THE SIXTEENTH POINT, *viz.* The forging of wills, bonds, bills, notes, receipts, and orders for the payment of money or the delivery of goods.

† *Sect. 53.* By 2. Geo. 2. c. 25. s. 1. It is enacted, To forge any deed, &c. felony without benefit of clergy.
 “ That if any person shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, or forged, or counterfeited, or willingly act or assist in the false making, forging, or counterfeiting any deed, will, testament, bond, writing obligatory, bill of exchange, promissory note for payment of money, indorsement or assignment of any bill of exchange, or promissory note for payment of money, or any acquittance or receipt, either for money or goods, with intention to defraud any person whatsoever, or shall utter or publish as true, any false, forged, or counterfeited deed, will, testament, bond, writing obligatory, bill of exchange, promissory note for payment of money, indorsement or assignment of any bill of exchange or promissory note for payment of money, acquittance or receipt, either for money or goods, with intention to defraud any person, knowing the same to be false, forged, or counterfeited; then every such person, being thereof lawfully convicted according to the due course of law, shall be deemed guilty of felony, and suffer death as a felon, without benefit of clergy.”

† *Seet.* 54. By 31. Geo. 2. c. 22. § 78. it is declared, that the punishment inflicted in and by the above statute extends to the commission of the like forgeries with an intention to defraud any corporation.

Persons convicted of forging or altering the acceptance of bills of exchange, &c. shall suffer death as felons.

† *Seet.* 55. By 7. Geo. 2. c. 22. which was made to amend and enlarge the said statute 2. Geo. 2. c. 25. it is further enacted, "That if any person shall falsely make, alter, forge, or counterfeit, or cause or procure to be falsely made, altered, forged, or counterfeited, or willingly act or assist in the false making, altering, forging, or counterfeiting, any acceptance of any bill of exchange, or the number or principal sum of any accountable receipt for any note, bill, or other security for payment of money, or any warrant or order for payment of money, or delivery of goods, with intention to defraud any person whatsoever, or shall utter or publish as true, any false, altered, forged, or counterfeited acceptance of any bill of exchange, or accountable receipt for any note, bill, or other security for payment of money, or warrant or order for payment of money, or delivery of goods, with intention to defraud any person, knowing the same to be false, altered, forged, or counterfeited; then every such person, being thereof lawfully convicted according to the due course of law, shall be deemed guilty of felony, and shall suffer death as a felon, without benefit of clergy."

† *Seet.* 56. By 18. Geo. 3. c. 18. the above statute is extended to such forgeries, when committed with an intention to defraud any corporation.

Foster 116.

† *Seet.* 57. It is said, that a deed forged in the name of a person who never had existence is a forgery within the above recited statutes.

The case of
Ann Lewis,
Foster C. L.
116.

† *Seet.* 58. It has been decided, that a forged deed, purporting to be a power of attorney from *A. B.* administratrix of her father *C. D.* a mariner, late belonging to such a ship, impowering *E. F.* to receive from the navy office the wages due to the deceased, is within the letter and meaning of the statute 2. Geo. 2. c. 25. although it appear that *C. D.* died childless and unmarried, and of course that there could be no such person *in rerum natura* as *A. B.* the daughter of *C. D.*

Bolland's
Case, O. B.
Feb. Sess.
1771.
Cates C. L.
78.

† *Seet.* 59. So also, where one *Bolland*, the holder of a note of hand, had indorsed it in his own name, but finding that the badness of his credit prevented him from getting it discounted, erased all the letters except the initial of his name, and added the letters "*ants*," making the name *Banks*, whom

whom he represented to be a wine-merchant living in *Rathbone-place*, but in fact no such person ever existed, it was decided to be a forgery within the statute 7. Geo. 2. c. 22.

† *Seet. 60.* So also, where a person found a real bill of *Tuft's Case,* exchange, and, in order to procure the cash for it, indorsed *Cases C. L.* it in a fictitious name, it was held to be a forgery, although *159.* no such person as the name forged was known to exist, and although the fictitious signature was not necessary to *Taylor's Case,* his obtaining the money. *Cases C. L.* *191.*

† *Seet. 61.* So also it is said, that if a bill of exchange *Per Lord* payable to *A.* or order, get into the hands of *another person* *KENYON,* in of the *same name* with the payee, and such person, knowing *Mead v.* that he is not the person in whose favour it was drawn, *Young,* indorse it, he is guilty of a forgery. *4. Term Rep.* *28.*

† *Seet. 62.* But it hath been determined, that a person, *Rex v.* who hath been long known by a name which was not his *Aickles,* own, and who afterwards, for the purposes of concealment, *Cases C. L.* assumes his own name, and in that name draws a bill of ex- *345.* change, is not guilty of forgery, although the bill was drawn with an intention to defraud; for, in order to constitute this offence, the deed or instrument forged must, by the forgery, be made a *false deed.*

† *Seet. 63.* It has also been decided, that a forged writing, *Sterling's* purporting to be the last will and testament of a person who *Case, Cases* is not dead, is a forgery within the above statute; for al- *C. L. 95.* though there can be no such instrument as a last will and testament in contemplation of law, until after the decease of the testator, it is sufficient if the forged instrument ap- *Cogan's Case,* *Cases C. L.* *356.* pears upon the face of it to be good, whether the supposed testator be alive or dead.

† *Seet. 64.* So also it is said, that a forged will is within *Fitzgerald's* the statute, although the christian name of the supposed *Case, Cases* testator is wrong mentioned in the body of the will. *Cro. Law 20.*

† *Seet. 65.* It is decided, that, in an indictment for forging *Birch and* a will, "a certain paper writing, purporting to be the last *Martin's Case,* will and testament of, &c." is a sufficient description of *Cases C. L.* *74.* the instrument forged.

† *Seet. 66.* It has been decided, that if a person apply to *Mary Dunn's* a prize agent with a probate, purporting to be a probate of *Case, Cases* the will of her husband, in which she is named executrix, *C. L. 54.* and obtain money from him due to the supposed testator, a receipt given by her as the wife and executrix of such testator is a forgery, if it appear that she is a different person, and not entitled to either of these characters; for although,

if a person give a note entirely as his own, his subscribing it by a fictitious name will not make it a forgery, the credit in such case being given to the person subscribing it, yet if he give a receipt as the receipt of another, and by that means obtain credit, it is strictly and properly a false instrument.

Mary Mitchell's Case,
Foster's C. L.
119.

+ *Sec. 67.* It hath been decided, that an order drawn in the name of an overseer of the poor, by a person who was or pretended to be intitled to parochial relief, on the tradesman who generally furnished the parish with goods, in the following form: "*Mr. Jeffries*, I desire you to let this woman have six yards of ordinary stuff, a pair of stockings, a shift, &c. and I will see it all paid for," is not an order for the delivery of goods within the statute 7. Geo. 2. c. 22.; for the words "warrant or order," as they stand in the statute, are synonymous and expressive of one and the same idea, and in common parlance import that the person giving such warrant or order hath, or at least claimeth, an interest in the money or goods which are the subject matter of that warrant or order; that he hath, or at least assumeth, a disposing power over such money or goods, and taketh on him to transfer the property, or custody of them at least, to the person in whose favour such warrant or order is made; for though the present case may come within the mischief intended to be prevented, yet in the construction of acts so penal as this, the old rule of adhering strictly to the letter must not be departed from.

Case of G. Williams, before the twelve judges,
Cases C. L.
108.

+ *Sec. 68.* So also, to forge an order on a tradesman, in the name of one of his customers, in the following form: "Please to let the bearer, *Captain George Williams*, have twelve barrels of tar, and in so doing you will oblige yours, &c. *W. R.*" is not an order for the delivery of goods within the meaning of the statute.

Ellor's Case,
Cases C. L.
166.

+ *Sec. 69.* And upon the authority of the foregoing cases it has been held, that an order in the following form, "Please to send ten pounds by the bearer, as I am so ill I cannot wait on you," is not an order for the payment of money; for the statute means such an order, as if genuine, the party giving it had a right to make, but this is a mere letter, rather requesting the loan of money than ordering the payment of it.

The case of John Clinch,
Cases C. L.
137.

+ *Sec. 70.* So also, an order forged by a servant in the name of the son and apprentice of a tradesman, in the following form, "Please to send by the bearer eight pounds of the silk unmarked," and carried to a dyer who had silk belonging to the trader to dye, is not an order for the delivery

livery of goods; for in the first place it is not directed to the person who had possession of the goods (a); and in the next, (a) See the son and apprentice had no interest, claim of interest in, Jones's Case, or a disposing power over the goods, nor any authority what- Cases C. L. 51.
ever to make such an order.

† *Self. 71.* But where a silversmith had sent two silver John Jones' cups to *Goldsmiths-hall* to be stamped, and his servant forged Case, Cases an order on the officer of the goldsmiths company, in the C. L. 51.
name of his master, for the re-delivery of them, it was held, that this would have been an order for the delivery of goods within the statute: but as the order was not directed to any person, he was pardoned on condition of transportation.

† *Self. 72.* And where a person went to the shop of a Lockitt's trader, looked out goods, and paid for them by a draft on a Case, Cases banker, in this form, "Mess. *Fordyce and Co.* Pay to Mr. C. L. 89.
" *W. H.* or bearer, sixteen pounds ten shillings, *R. V.*" out of which he received six pounds ten shillings, it was decided, by the unanimous opinion of the twelve judges, to be an order for the payment of money within the statute 7. Geo. 2. c. 22. although neither the drawer of it, nor any person of his name, ever kept cash at *Fordyce's* banking shop; for the nature of the order assumes, that there was cash there in the name of the drawer, which he hath taken upon him to transfer to the person in whose favour the order was made.

† *Self. 73.* It hath been determined, that the entry of Harrison's the receipt of money or notes made by a cashier of the bank Case, Cases of *England* in the bank book of a creditor, is an account- C. L. 166.
able receipt for the payment of money within the statute 7. Geo. 2. c. 22. and that altering the principal sum of any such entry, by prefixing a figure to increase its numeration, is forging a receipt within that statute.

† *Self. 74.* But it is said, that the words, "Received Russell's Case, Cases
" the Contents," placed at the bottom of a *cash memorandum*, C. L. 8.
is not an accountable receipt within the statute.

† *Self. 75.* So also it seems, that the forging of a receipt Jas. Lyons' for scrip at the bank of *England*, in the form below recited, is Case, Jan.
not forging an accountable receipt for money within the statute. *Self. 1794.* on
a case reserved

" £. 2000 three per cent. Annuities, 1793.

" C. No. 236.

" By virtue of a resolution of the *House of Commons*, for *Sed quare*, for
" raising £. 4,500,000 for the service of no opinion had
" the year 1793. been publick-

" Received of the sum of one hundred this case,
" and forty-four pounds for the deposit of £. 10 per cent on when this
O o 4 " four- sheet went
the press.

"fourteen hundred and forty pounds, subscribed by him in
 "pursuance of the abovesaid resolution; and upon due
 "payment of the remaining £.90 *per cent.* of the said sum of
 "fourteen hundred and forty pounds, the said subscriber
 "or his assigns, by indorsement hereon, will, in exchange
 "for this receipt, become intitled to two thousand pounds,
 "joint stock of £.3 *per cent.* annuities, which were conso-
 "lidated at the *Bank of England*, by certain acts made in the
 "25th, 28th, 29th, 32d, and 33d years of the reign of his
 "late majesty *King George the Second*, and by several subse-
 "quent acts, the interest to commence from the fifth day of
 "*January 1793*. Every subscriber who shall compleat the
 "payment of his subscription on or before the 12th day of
 "*December* next, will be allowed a discount after the rate
 "of £.3 *per cent. per ann.* upon the sum so compleating his
 "subscription, from the day of paying it to the 24th day
 "of *January* next. Witness my hand, this 4th day of
 "*April 1793*.
 "Entered, W. JOHNSON." "T. THOMPSON." £.144

"*May 31*. Received one hundred and forty-four pounds,
 "for second payment, - "T. THOMPSON." £.144
 "Entered, W. SMART." "T. THOMPSON."

"*July 19*. Received one hundred and forty-four pounds,
 "for third payment, - "J. PADMAN." £.144
 "Entered, J. SIMPSON." "J. PADMAN."

"*Aug. 16*. Received one hundred and forty-four pounds,
 "for fourth payment, - "T. THOMPSON." £.144
 "Entered, W. SMART." "T. THOMPSON."

"*Sept. 27*. Received two hundred and sixteen pounds,
 "for fifth payment, - "T. THOMPSON." £.216
 "Entered, P. JOHNSON." "T. THOMPSON."

Powell's Case, † *Sec. 76*. In an indictment for forgery, it is sufficient
 Cases C. L. to aver a *general intent* to defraud, without setting out the
 72. particular manner by which the fraud was to be effected;
 Cases C. L. for it is no answer to the charge of forgery, to say that there
 193. *notis.* was no *special intent* to defraud any *particular person*: and if
 Lavell's Case, a particular person be named, a description of him to a *com-*
 Cases C. L. *mon intent* is all that is required: as if it charge the intention
 213. to defraud "*Mess. Drummond and Co. Charing-cross*;" or to
 Jones and defraud "*A. B. C., D., &c. the stewards of the feast of the sons*
 Palmer's of the clergy."
 Case, Cases
 C. L. 235.

CHAPTER THE FIFTY-SECOND.

OF

SPREADING THE PLAGUE.

OFFENCES against the *public health*, created by statute, are,

1. Spreading the plague.
2. Neglecting quarantine.

As to THE FIRST POINT, *viz.* The offence of spreading the plague.

† *Stat. 1.* By 1. Jac. 1. c. 31. f. 7. it is enacted, "That ^{An infected person com-} if any person or persons infected, or being or dwelling in ^{manded to} any house infected, shall be by the mayor, bailiffs, con- ^{keep his} stable, or other head officer of any city, borough, town ^{house, dis-} corporate, privileged place or market town, or by any ^{obeyeth.} justice of peace, constable, headborough, or other officer of the county (if any such infection be out of any city, borough, town corporate, privileged place, or market town) commanded or appointed, as aforesaid, to keep his or their house, for avoiding of further infection, and shall notwithstanding wilfully and contemptuously disobey such direction and appointment, offering and attempting to break out and go abroad, and to resist, or going abroad and resisting such keepers or watchmen as shall be appointed, as aforesaid, to see them kept in; that then it shall be lawful for such watchmen with violence to enforce them to keep their houses: and if any hurt come by such enforcement to such disobedient persons, that then the said keepers, watchmen, and any other their assistants, shall not be impeached therefore: and if any infected person, as aforesaid, so commanded to keep house, shall, contrary to such commandment, wilfully and contemptuously go abroad, and shall converse in company, having any infectious sore upon him uncured, that then such person and persons shall be taken, deemed, and adjudged

“ as a felon, and to suffer pains of death, as in case of felony:
 “ but if such person shall not have any such sore found
 “ about him, then for his said offence to be punished as a
 “ vagabond in all respects should or ought to be, by the
 “ statute made in the nine-and-thirtieth year of the reign of
 39. Eliz. c. 4. “ our late sovereign lady *Queen Elizabeth*, for the punish-
 “ ment of rogues and vagabonds; and further, to be bound
 “ to his or their good behaviour for one whole year.”

CHAPTER THE FIFTY-SECOND

CONTINUED.

OF

NEGLECTING QUARANTINE.

† *Sect. 1.* **BY** 26. Geo. 2. c. 6. s. 1. IT IS RECITED, All vessels, persons, and goods coming from places infected with or frequently subject to the plague, from whence the plague may be brought, subject to perform quarantine in such manner as hath been or shall be ordered by his majesty, his heirs, or successors; and for punishing offenders therein in a more expeditious manner than can be done by the ordinary methods of law:” AND ENACTED, “That all ships and vessels arriving, and all persons, goods and merchandizes whatsoever, coming or imported into any port or place within *Great Britain* or *Ireland*, or the isles of *Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man*, from any place from whence his majesty, his heirs or successors, by and with the advice of his or their privy council, shall judge it probable that the infection may be brought, shall be obliged to make their quarantine in such place and places, for such time and in such manner, as hath been or shall, from time to time, be directed by his majesty, his heirs or successors, by his or their order or orders made in his or their privy council, and notified by proclamation, or published in the *London Gazette*; and that until such ships, vessels, persons, goods, and merchandizes shall have respectively performed, and be discharged from such quarantine, no such person, goods, or merchandizes, or any of them, shall come or be brought on shore, or go or be put on board any other ship or vessel, in any place within his majesty’s dominions, unless in such manner, and in such cases, and by such licence, as shall be directed or permitted by such order or orders made by his majesty, his heirs or successors, in council as aforesaid; and that all such ships and vessels, and the persons or goods coming or imported in, or going or being put on board the same, and all ships, vessels, boats, and persons receiving any goods or persons out of the same, shall be subject to such orders, rules, and directions concerning

“cerning quarantine, and the prevention of infection, as
 “have been or shall be made by his majesty, his heirs and
 “successors, in council, and notified by proclamation, or
 “published in the *London Gazette* as aforesaid.”

Vessels in-
 fected, being
 to the north-
 ward of *Cape*
Finisterre, to
 proceed to the
 harbour of
New Grimsby,
 and give
 notice of their
 case, &c.

Vessels not
 able to make
Scilly, to re-
 main in some
 road till orders
 arrive.

When any
 place shall be
 infected, or
 orders made,
 officers to go
 off to the ves-
 sel, and inter-
 rogate the
 master con-
 cerning the
 ship's cargo
 and voyage,
 health, &c.

† *Sec. 2.* By 26. Geo. 2. c. 6. s. 2. it is further enacted,
 “That if the plague shall appear on board any ship, being
 “to the northward of *Cape Finisterre*, the master, com-
 “mander, or other person having charge thereof, shall im-
 “mediately proceed to the harbour of *New Grimsby* in the
 “islands of *Scilly*, where being arrived, he shall make known
 “his case to some officer of the customs there, who shall
 “immediately acquaint some custom-house officer of some
 “near port of *England* thereof; and the said custom-house
 “officer shall, with all possible speed, send up the intelli-
 “gence thereof to one of his majesty's principal secretaries
 “of state, that such measures may be taken for the comfort
 “and support of the crew of such ship so infected, and such
 “precautions used to prevent the spreading of the infection,
 “as the case shall require; and the said ships shall remain
 “at the said islands of *Scilly*, till his majesty's pleasure be
 “known; nor shall any of her crew go on shore; but in
 “case the said master, commander, or other person having
 “charge of the said ship so infected, shall not be able to
 “make the said islands of *Scilly*, or shall be forced by stress
 “of weather or otherwise, to go up either of the channels,
 “he shall not presume to enter with such ship into any
 “port, but shall remain in some open road, till he receives
 “orders from his majesty, or his privy council, and shall
 “take care to prevent any of his ship's company from going
 “out of his ship, and to avoid all intercourse with other
 “ships or persons; and the said master, or any other person
 “on board such ship as aforesaid, who shall be disobedient
 “herein, shall be adjudged guilty of felony, and shall suffer
 “death as in cases of felony without benefit of clergy; and
 “every such offence so made felony, shall and may be en-
 “quired of, heard, and determined in the county where the
 “offence shall be committed, or else in the county where
 “the offender shall be apprehended.”

† *Sec. 3.* By 26. Geo. 2. c. 6. s. 3. To the end that it
 may be better known whether any ship or vessel be actually
 infected with the plague, or whether such ship or vessel, or
 the mariners or cargo coming and imported in the same, are
 liable to any orders touching quarantine, it is further
 enacted, “That when any country or place is, or shall be
 “infected with the plague; or when any order or orders is,
 “are, or shall be made by his majesty, his heirs or successors,
 “concerning quarantine, and the prevention of infection as
 “afore-

“aforesaid; as often as any ship or vessel shall attempt to
 “enter into any port or place in *Great Britain* or *Ireland*, or
 “of the isles of *Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man*, the
 “principal officer of his majesty’s customs in such port
 “or place, or such person as shall be authorized to see
 “quarantine duly performed, shall go off, or cause some
 “other person to be by him appointed for that purpose to
 “go off to such ship or vessel; and such officer, or other
 “person authorized to see quarantine performed as aforesaid,
 “or the person so by him appointed for that purpose, shall,
 “at a convenient distance from such ship or vessel, demand
 “of the commander, master, or other person having charge
 “of such ship or vessel; and such commander, master, or
 “other person having charge of such ship or vessel, shall,
 “upon such demand, give a true account of the following
 “particulars; that is to say, the name of such ship or ves-
 “sel; the name of the commander or person having charge
 “thereof; at what place or places the cargo was taken on
 “board; what place or places the ship or vessel touched at
 “in her voyage; whether such places, or any, and which
 “of them were infected with the plague; how long such
 “ship or vessel had been in her passage; how many persons
 “were on board when the said ship or vessel set sail; whe-
 “ther any and what persons, during that voyage on board
 “such ship or vessel, had been or shall be then infected
 “with the plague; how many died in the voyage, and of
 “what distemper; what ships or vessels he, or any of his
 “ship’s company, with his privity, went on board, or had
 “any of their company come on board his ship or vessel in
 “the voyage; and to what place such ships or vessels be-
 “longed; and also the true contents of his lading to the
 “best of his knowledge: and in case it shall appear upon
 “such examination, or otherwise, that any person then on
 “board such ship or vessel shall, at the time of such exami-
 “nation, be actually infected with the plague, or that such
 “ship is obliged to perform quarantine, in such case it shall
 “and may be lawful to and for the officers of any of his
 “majesty’s ships of war, or any of his majesty’s forts or
 “garrisons, and all other his majesty’s officers whom it may
 “concern, upon notice thereof given to them, or any of
 “them respectively, and to and for any other person or
 “persons whom they shall call to their aid and assistance,
 “and they are hereby required to oblige such ship or vessel
 “to go and repair to such place as hath been or shall be
 “appointed for performance of quarantine, and to use all
 “necessary means for that purpose, be it by firing of guns
 “upon such ship or vessel, or any other kind of force or
 “violence whatsoever: and in case any such ship or vessel
 “shall come from any place visited with the plague, or have
 “any

If the infec-
 tion be on
 board, &c.
 the vessel
 obliged to
 perform qua-
 rantine.

If the vessel shall come from any place infected, or have infection on board, the master concealing the same, guilty of felony; and not making a true discovery in other particulars, to forfeit 200*l*.

“ any person on board actually infected; and the commander, master, or other person having charge of such ship or vessel, shall conceal the same, such commander, master, or other person having charge of such ship or vessel, shall be adjudged guilty of felony, and shall suffer death as in cases of felony without benefit of clergy; and in case such commander, master, or other person having charge of such ship or vessel, shall, upon such demand made as aforesaid, not make a true discovery in any other of the particulars aforesaid, such commander, master, or other person having charge of such ship or vessel, for every such offence shall forfeit the sum of two hundred pounds; one moiety thereof to the king, his heirs and successors, and the other moiety to him or them who shall sue for the same, by action of debt, bill, plaint, or information, in any of his majesty's courts of record at *Westminster*, *Edinburgh*, *Dublin*, or in the proper courts of the isles of *Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man*, respectively.”

Master performing quarantine, to deliver the bill of health, and manifest, of the Consul; with the log-book and journal.

† *Seet. 4.* By 26. Geo. 2. c. 6. s. 4. it is further enacted, “ That every master, commander, or other person having charge of any ship or vessel which shall be ordered to perform quarantine as aforesaid, shall, after his arrival at the place appointed for the performance of his quarantine, deliver on demand to the chief officer appointed to see quarantine duly performed there, such bill of health, and manifest, as he shall have received from any *British* consul during his voyage, together with his log-book and journal, under penalty of forfeiting five hundred pounds; one moiety thereof to the king, his heirs and successors, the other moiety to him or them who shall sue for the same, by action of debt, bill, plaint, or information, in any of his majesty's courts of record at *Westminster*, *Edinburgh*, *Dublin*, or in the proper courts of the isles of *Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man*, respectively.”

Master, &c. quitting the vessel before quarantine performed, unless by licence,

† *Seet. 5.* By 26. Geo. 2. c. 6. s. 5. it is further enacted, “ That if any commander, master, or other person having charge of any ship or vessel liable to perform quarantine, having notice thereof, shall himself quit, or shall knowingly permit or suffer any seaman or passenger coming in such ship or vessel to quit such ship or vessel, by going on shore, or by going on board any other ship, boat, or vessel, before such quarantine shall be fully performed, unless in such cases, and by such proper licence as shall be directed or permitted by such order or orders made or to be made concerning quarantine, and the prevention of infection as aforesaid; or in case any commander, master, or other person having charge of such ship or vessel,

" vessel, shall not, within convenient time after due notice
 " given for that purpose by the proper officer, cause such or not going
 " ship or vessel, and the lading thereof, to be conveyed into to the place
 " the place or places appointed for such ship, vessel, and appointed, to
 " lading to perform quarantine respectively; then, and in forfeit goal.
 " every such case, every such commander, master, or other
 " person having charge of such ship or vessel, for every such
 " offence shall forfeit five hundred pounds; one moiety
 " thereof to the king, his heirs and successors, and the other
 " moiety to him or them who will sue for the same; and
 " also if any person shall so quit such ship or vessel by
 " going on shore, or by going on board any other ship or and persons
 " vessel, contrary to the true meaning of this act, it shall quitting the
 " and may be lawful for all persons whatsoever, by any kind vessel to be
 " of force and violence, to compel such person to return obliged by
 " on board such ship or vessel; and every such person so force to re-
 " quitting such ship or vessel shall, for every such offence, turn, and to
 " suffer imprisonment for the space of six months, and shall suffer impris-
 " also forfeit the sum of two hundred pounds; one moiety onment, and
 " to the king, his heirs and successors, the other moiety to forfeit 200l.
 " him or them that will sue for the same, the same respective
 " penalties and forfeitures to be recovered by action of debt,
 " bill, plaint, or information, in any of his majesty's courts
 " of record at *Westminster, Edinburgh, Dublin*, or in the pro-
 " per courts of the isles of *Guernsey, Jersey, Alderney, Sark,*
 " or *Man*, respectively."

† *Sect. 6.* By 26. Geo. 2. c. 6. s. 6. it is further enacted, Lazarets may
 " That whenever his majesty, his heirs and successors, by be erected on
 " and with the advice and consent of parliament, shall direct common or
 " houses or lazarets to be provided for the receiving and private
 " entertaining of persons obliged to perform quarantine, or grounds,
 " for the depositing, opening, and airing of goods and mer- making satis-
 " chandizes liable to perform quarantine as aforesaid, it faction to the
 " shall and may be lawful to erect the same either in any proprietors.
 " waste grounds or commons, or where such waste grounds
 " or commons are not sufficient, in the several grounds of
 " any person or persons whatsoever, not being a house,
 " park, garden, orchard, yard, or planted walk, or avenue
 " to a house, paying such rate, rent, or consideration for
 " the same to the persons interested therein respectively,
 " according to their several interests in the same, as shall be
 " agreed on between the persons so interested, their guar-
 " dians or trustees, and any two persons to be appointed
 " for that purpose by his majesty, his heirs or successors,
 " under his or their sign manual; and in case of any differ- In case of
 " rence concerning such rate, rent or consideration between difference, the
 " the persons so interested, their guardians or trustees, and same to be
 " such persons so to be appointed by his majesty, his heirs settled by a
 " quarter-session
 " or jury of the
 " or sons.

" or successors as aforesaid, then and in such cases the said
 " persons so to be appointed by his majesty, his heirs and
 " successors, may and are hereby authorized, thirty clear
 " days before any general quarter-sessions of the peace to
 " be holden for the respective counties or divisions where
 " such grounds shall respectively lie as aforesaid, to give or
 " cause to be given, to the occupier or occupiers of such
 " several grounds, or to be left at their last places of abode
 " respectively, a notice in writing, describing the quantity
 " of grounds so directed by his majesty, his heirs and suc-
 " cessors, by and with the advice and consent of parliament,
 " for the purposes aforesaid, and purporting that the rent
 " or consideration of such ground will be adjusted and
 " settled by a jury at the said sessions; and the justices at
 " their said sessions, upon proof to them made that such
 " notices have been given, shall and are hereby authorized
 " and required to charge the jury which shall attend at the
 " said sessions, or some other jury of twelve honest and sub-
 " stantial men (to be then and there impanelled and returned
 " by the sheriff of the county, without fee or reward) and
 " cause to be sworn, well and truly on their oaths to assess
 " the value of the ground comprized in the said notices,
 " and the rent or consideration to be given for the same to
 " the respective owner or owners thereof, according to their
 " respective interests therein; which oath the said justices
 " are hereby required to administer to the said jury, and to
 " which said jury the said persons to be appointed by his
 " majesty, his heirs and successors, and the parties interested
 " in such ground, shall have their lawful challenges; and
 " the said jury being so sworn and charged as aforesaid,
 " after proper evidence on oath given to them, shall by their
 " verdict assess the rent or consideration to be given for such
 " ground to the respective owner or owners thereof, ac-
 " cording to their respective interests therein; which ver-
 " dict of the said jury, and judgment of the said justices
 " thereupon, shall be conclusive and finally bind all par-
 " ties; and that from and after such verdict and judgment,
 " his majesty, his heirs and successors, shall and may hold
 " and enjoy such ground for and during all such time and
 " term as his majesty, his heirs and successors, shall judge
 " necessary for the purposes aforesaid, paying for the same
 " such rate, rent, or other consideration, as shall be agreed
 " upon, or assessed and adjudged as aforesaid."

Officers to
 oblige all per-
 sons to com-
 ply with or-
 ders.

† Sed. 7. By 26. Geo. 2. c. 6. s. 7. it is further enacted,
 " That the proper officers authorized to put in execution
 " such orders made or to be made as aforesaid, shall, and
 " they are hereby impowered and required to cause and
 " compel all persons obliged to perform quarantine as afo-
 " said,

"said, and all goods and merchandizes comprized within
"any such orders made or to be made as aforesaid, respec-
"tively to repair, or be conveyed to some of the said
"houses or lazarets, or to such other places as shall be
"provided for the reception of such persons, goods, or
"merchandizes, or for the opening and airing of such
"goods or merchandizes, according to such order or
"orders made or to be made as aforesaid."

† Sect. 8. By 26. Geo. 2. c. 6. s. 8. it is further enacted,
"That if any person obliged to perform quarantine as
"aforesaid, shall wilfully refuse or neglect to repair, within
"convenient time after due notice for that purpose given
"to him, her, or them, by the proper officer, to the house,
"lazaret, or other place duly appointed for him, her, or
"them, or having been placed in such house or lazaret, or
"other place, shall escape, or attempt to escape, out of
"the same before quarantine fully performed; it shall and
"may be lawful to and for the watchmen, and other per-
"sons appointed to see quarantine performed, by such
"force as the case shall require, to compel every such per-
"son so refusing or neglecting as aforesaid, and every such
"person so escaping or attempting to escape as aforesaid,
"to repair or return into such house, lazaret, or other
"place so appointed for him or her as aforesaid; and every
"such person so refusing or neglecting to repair, within
"convenient time after such notice as aforesaid, into such
"house, lazaret, or other place appointed for him or her
"as aforesaid; and also every person actually escaping as
"aforesaid, shall be adjudged guilty of felony, and shall
"suffer death as a felon, without benefit of clergy."

Persons re-
fusing to per-
form quaran-
tine, &c.

Officers may
compel them.

Persons escap-
ing, &c. guilty
of felony.

† Sect. 9. By 26. Geo. 2. c. 6. s. 9. IT IS RECITED,
"That whereas disobedience or refractory behaviour in
persons under quarantine may be attended with great dan-
ger and inconvenience," it is further enacted, "That all
"persons liable to perform quarantine, whether in ships,
"lazarets, or elsewhere, shall be subject, during the said
"quarantine, to such orders as they shall receive from the
"proper officers authorized to see it duly performed;
"and the said officers are hereby impowered and required
"to enforce all necessary obedience to their said orders;
"and may, in case of necessity, call in others to their as-
"sistance; and all persons so called are hereby required
"to assist accordingly."

Officers to en-
force obedi-
ence.

† Sect. 10. By 26. Geo. 2. c. 6. s. 10. it is further en-
acted, "That if any person not infected with the plague,
"nor liable to perform quarantine, shall enter any house,
"or lazaret, or other place appointed for the reception of
"such persons, goods, or merchandizes, or for the opening
"and airing of such goods or merchandizes, according to
"such order or orders made or to be made as aforesaid, he
"shall be adjudged guilty of felony, and shall suffer death
"as a felon, without benefit of clergy."

Sound persons
entering a la-
zaret, &c.
obliged to con-
tinue there;

“lazaret, or other place so appointed as aforesaid, whilst
 “any person or persons infected with the plague, or being
 “under quarantine, shall be therein; and shall return, or
 “attempt to return from thence, unless in such cases, and
 “by such licence, as shall be directed or permitted by
 “such order or orders made or to be made as aforesaid; it
 “shall and may be lawful to and for the watchmen, or
 “other persons appointed to guard or secure such house,
 “lazaret, or other place so appointed as aforesaid, by such
 “force as the case shall require, to compel such person so
 “returning, or attempting to return, to repair into such
 “house, lazaret, or other place so appointed as aforesaid,
 “there to continue and perform quarantine: and in case
 “such person shall actually escape out of such house, laza-
 “ret, or other place where he or she shall be so placed for
 “performance of quarantine, before he or she shall have
 “fully performed the same, he or she shall be adjudged
 “guilty of felony, and shall suffer death as a felon, without
 “benefit of clergy.”

and if he es-
 cape, felony.

Officer neg-
 lecting duty,
 to forfeit his
 office and fees.

† *Seet. 11.* By 26. Geo. 2. c. 6. f. 11. it is further en-
 acted, “That if any officer or officers of his majesty’s cus-
 “toms, or any other officer or officers, person or persons
 “whatsoever, to whom it doth or shall appertain to exe-
 “cute any order or orders made or to be made concerning
 “quarantine, or the prevention of infection, and notified
 “as aforesaid, or to see the same put in execution, shall
 “be guilty of any wilful breach or neglect of his or their
 “duty in that behalf, every such officer and person so of-
 “fending shall forfeit his office or employment in the cus-
 “toms, or any other office or employment, and shall
 “become from thenceforth incapable to hold or enjoy
 “the same, or to take a new grant thereof, and forfeit the
 “sum of one hundred pounds, one moiety thereof to the
 “king, his heirs and successors, and the other moiety to
 “him or them who shall or will sue for the same by action
 “of debt, bill, plaint, or information, in any of his ma-
 “jesty’s courts of record at *Westminster, Edinburgh, Dublin,*
 “or in the proper courts of the isles of *Guernsey, Jersey,*
 “*Alderney, Sark, or Man;* respectively; and if any such
 “officer or person shall embezzle, or shall knowingly and
 “willingly damage any goods performing quarantine under
 “his direction, he shall be liable to pay treble damages,
 “and full costs of suit.”

and if he em-
 bezzle any
 goods, to pay
 treble da-
 mages.

† *Seet. 12.* By 26. Geo. 2. c. 6. f. 12. it is recited,
 “That whereas certain species of goods and merchandizes
 are more especially liable to retain infection, and may be
 brought from places infected into other countries, and from
 thence

thence imported into his majesty's dominions in ships not obliged to perform quarantine," it is enacted, "That all such goods and merchandizes as are or shall be particularly specified for that purpose, in any order or orders made or to be made concerning quarantine, and the prevention of infection as aforesaid, which shall be imported into any of his majesty's dominions, from any foreign country or place, in any ship or vessel whatsoever, shall be subject and liable to such order or orders made or to be made concerning quarantine, and the prevention of infection as aforesaid."

Goods specified to be liable to quarantine.

+ *Sec. 13.* By 26. Geo. 2. c. 6. s. 13. it is further enacted, "That after quarantine shall have been duly performed by any ship or vessel, person or persons, obliged to perform quarantine, according to such order or orders made as aforesaid, and this act, and upon proof to be made by the oaths of the master, or other person having charge of such ship or vessel, and of two of the persons belonging to such ship or vessel, or upon proof to be made by the oaths of two or more credible witnesses, before the customer, comptroller, or collector of the port where such quarantine shall be performed, or the next port thereunto, or before any of their deputies, or any justice of the peace living near to such port, or where such quarantine shall have been performed within any of the said isles of *Guernsey, Jersey, Alderney, Sark, or Man*, before any two jurats or magistrates of any of the said isles respectively (which persons are hereby authorized and required to administer such oath), that such ship or vessel, and all and every such person and persons respectively, have duly performed quarantine as aforesaid; and that the ship or vessel, and all and every such person and persons are free from infection; and after producing a certificate to that purpose, signed by the chief officer who superintended the quarantine of the said ship, then and in the said respective cases such customer, comptroller or collector, or any of their deputies, together with the said justice of the peace, or such jurats or magistrates as aforesaid respectively, are hereby required to give a certificate thereof; and thereupon such ship or vessel, and all and every such person and persons so having performed quarantine, shall be liable to no further restraint or detention upon the same account, for which such ship or vessel, person or persons, shall have performed quarantine as aforesaid."

On proof that the vessel hath performed quarantine,

that the same is free from infection; and a certificate from the officer, &c. to be discharged

+ *Sec. 14.* By 26. Geo. 2. c. 6. s. 14. it is further enacted, "That the officer before whom such oath shall

No fee to be taken.

“ be made, and by whom such certificate shall be given,
 “ shall for such respective oath and certificate demand or
 “ take no fee or reward whatsoever.”

Orders to be
 complied with
 for the airing
 of goods, and
 on certificate
 and proof,

† *Stat. 15.* By 26. Geo. 2. c. 6. s. 15. it is provided,
 “ That all goods, wares, and merchandizes, liable to qua-
 “ rantine as aforesaid, shall be opened and aired in such
 “ place or places, and for such time, and in such manner,
 “ as shall be directed by his majesty, his heirs or succes-
 “ sors, by such order or orders to be made as aforesaid ;
 “ and after such orders shall have been duly complied with,
 “ and a certificate thereof given by the chief officer ap-
 “ pointed to superintend the quarantine and airing of such
 “ goods, wares, and merchandizes, and proof shall be made
 “ thereof, by the oaths of two or more credible witnesses,
 “ before the customor, comptroller, or collector of the
 “ port, lying next to such place or places where such
 “ goods, wares or merchandizes shall have been opened
 “ and aired as aforesaid, or any of their deputies, or any
 “ justice of the peace living near the same, or before any
 “ two jurats or magistrates of the said isles of *Guernsey*,
 “ *Jersey*, *Alderney*, *Sark* or *Man* respectively (who are here-
 “ by authorised and required to administer such oath),
 “ upon certificate and return of such proof by such cus-
 “ tomor, comptroller, or collector, or any of their depu-
 “ ties, or such two jurats or magistrates as aforesaid, who
 “ are hereby respectively required to make such certificate
 “ and return to the commissioners appointed for the ma-
 “ nagement of the customs of *Great Britain* or *Ireland*, or
 “ to the governor or commander in chief, being upon the
 “ place, in the isles of *Guernsey*, *Jersey*, *Alderney*, *Sark*
 “ or *Man* respectively), such goods, wares, and merchan-
 “ dizes shall be forthwith discharged from any restraint or
 “ detention upon the same account, by order of the said
 “ commissioners, or any two of them, or of the said go-
 “ vernor or commander in chief of any of the said isles as
 “ aforesaid respectively ; for every of which oath, certifi-
 “ cate, and order, no fee or reward whatsoever shall be
 “ demanded or taken.”

goods to be dis-
 charged.

Officer de-
 manding a fee
 for such oath
 or certificate,
 to forfeit 100l.

† *Stat. 16.* By 26. Geo. 2. c. 6. s. 16. it is also provided,
 “ That if any officer or other person shall demand or take
 “ any fee or reward whatsoever for any such oath, order,
 “ or certificate, to be administered or made in pursuance
 “ of this act, every person so offending shall forfeit the
 “ sum of one hundred pounds, one moiety thereof to his
 “ majesty, his heirs and successors, and the other moiety
 “ to him or them who shall sue for the same, by action of
 “ debt, bill, plaint or information, in any of his majesty’s
 “ courts

“ courts of record at *Westminster, Edinburgh, Dublin*, or in
 “ the proper courts of *Guernsey, Jersey, Alderney, Sark*, or
 “ *Man* respectively, in which case treble costs shall be al-
 “ lowed to either party, as in other cases.”

+ *Secl. 17.* By 26. Geo. 2. c. 6. s. 17. it is further en-
 acted, “ That if any officer or other person appointed to
 “ see quarantine duly performed, or any person placed or
 “ appointed as a watchman upon any house, lazaret, ship,
 “ or other place for performance of quarantine in pur-
 “ suance of this act, shall desert from their duty when em-
 “ ployed on the said business of quarantine, or shall know-
 “ ingly and willingly permit or suffer any person, ship,
 “ goods, or merchandizes, to depart or be conveyed out
 “ of such house, lazaret, ship, or other place respectively
 “ appointed for performance of quarantine, unless in such
 “ cases, and by such licence, as are or shall be directed or
 “ permitted by some order or orders made or to be made as
 “ aforesaid; or if any person directed as aforesaid to give a
 “ certificate of a ship’s having duly performed her quaran-
 “ tine or airing, shall knowingly give a false certificate; or
 “ then, and in every of the said cases, every such officer and
 “ person so offending shall suffer death, as in cases of felony
 “ without benefit of clergy.”

Superintend-
 ant of the qua-
 rantine, or
 watchman,
 acting con-
 trary to duty.

or officer giv-
 ing false cer-
 tificate, to suf-
 fer death.

+ *Secl. 18.* By 26 Geo. 2. c. 6. s. 18. it is further en-
 acted, “ That if any person or persons shall knowingly or
 “ wilfully conceal from the officers of quarantine, or shall
 “ clandestinely convey any letters, goods, wares, or mer-
 “ chandizes from any ship under quarantine, or liable to
 “ perform quarantine, by any such order to be made as
 “ aforesaid, or from any lazaret or other place where goods
 “ shall be performing quarantine, every such person so of-
 “ fending shall suffer death, as in cases of felony without
 “ benefit of clergy.”

Persons con-
 cealing or
 clandestinely
 conveying let-
 ters or goods
 from any ship
 under qua-
 rantine, or
 from any la-
 zaret, to suffer
 death.

+ *Secl. 19.* By 26. Geo. 2. c. 6. s. 19. IT IS RECITED,
 “ That whereas it is notorious, that notwithstanding the
 “ many good laws made to prevent the clandestine importa-
 “ tion of customable and prohibited goods and merchandizes,
 “ a pernicious trade of that kind is still carried on, for the
 “ most part in open boats or vessels of small burthen, which
 “ privately and in the night put into creeks and secret places
 “ on the coast, thereby escaping the observation of the of-
 “ ficers of the customs, which practices may prove highly de-
 “ trimental to the safety of these kingdoms during a time of
 “ infection;” for prevention thereof it is enacted, “ That
 “ when any part of *Great Britain, Ireland*, or the isles of
 “ *Guernsey, Jersey, Alderney, Sark* or *Man*, or *France, Spain*,
 “ *Portugal*, shall be men-
 “ tioned in a
 “ proclamation.

During the
 infection in
 the places
 herein men-
 tioned, small
 vessels to give
 security not to
 touch at any
 country which
 shall be men-
 tioned in a
 proclamation.

“ *Portugal*, or the *Low Countries*, shall be infected with
 “ the plague, it shall and may be lawful to and for
 “ his majesty, his heirs and successors, by his or their pro-
 “ clamations to prohibit and restrain all small boats and
 “ vessels, under the burthen of twenty tons, from sailing
 “ or passing out of any port or place of *Great Britain* or
 “ *Ireland*, or the isles of *Guernsey*, *Jersey*, *Alderney*, *Sark*
 “ and *Man*, or any of them, until security be first given
 “ by the master of every such boat or vessel respectively, to
 “ the satisfaction of the principal officer of the customs, or
 “ the chief magistrate of the port or place from whence
 “ such boat or vessel shall sail, by bond taken to the king,
 “ his heirs or successors, with sufficient sureties, in the
 “ penalty of three hundred pounds, with condition that if
 “ such boat or vessel shall not go to, or touch at any
 “ country, port or place to be mentioned for that purpose
 “ in such proclamation; and if the master or other person
 “ having charge of such boat or vessel, and all and every
 “ mariner and mariners, passenger and passengers, going
 “ in such boat or vessel shall, during the time aforesaid,
 “ not go on board any other ship or vessel at sea, and if
 “ such master or other person having charge of such boat
 “ or vessel, shall not permit or suffer any person or persons
 “ to come on board such boat or vessel at sea, from any
 “ other ship or vessel, and shall not, during the time a-
 “ foresaid, receive any goods and merchandizes whatsoever
 “ out of any other ship or vessel, then such bond shall be
 “ void, or to such effect; for the making of which bond
 “ no fee or reward whatsoever shall be taken; and in case
 “ any boat or vessel for which such security shall be re-
 “ quired by such proclamation, shall set sail or pass out
 “ of any port or place of *Great Britain* or *Ireland*, or the
 “ islands of *Guernsey*, *Jersey*, *Alderney*, *Sark* and *Man*, or
 “ any of them respectively, before such security be given
 “ as aforesaid, every such boat or vessel so sailing or passing
 “ out of any port or place, contrary to the true intent and
 “ meaning of this act, together with her tackle, apparel,
 “ and furniture, shall be forfeited to the king, his heirs
 “ and successors, and shall and may be seized, sued for,
 “ and recovered in his majesty’s court of exchequer at
 “ *Westminster*, *Edinburgh*, or *Dublin*, or in the proper
 “ courts of the isles of *Guernsey*, *Jersey*, *Alderney*, *Sark*, or
 “ *Man* respectively, to the use of his majesty, his heirs
 “ and successors; and the master of, and every mariner
 “ failing in any such boat or vessel, being thereof lawfully
 “ convicted upon his or their appearance or default, upon
 “ the oath or oaths of one or more credible witness or wit-
 “ nesses, by one or more justice or justices of the peace
 “ where such offender shall be found (which oath such jus-
 “ tice

Vessels sailing
 without such
 security to be
 forfeited,

and the master
 and crew to
 forfeit 20l.

“ tice or justices of the peace are hereby impowered and
 “ required to administer), shall forfeit the sum of twenty
 “ pounds; one moiety thereof to the informer, the other
 “ moiety to the poor of the parish where such offender
 “ shall be found; the same to be levied by distress and sale
 “ of the offender's goods, by warrant under the hand and
 “ seal, or the hands and seals, of such justice or justices
 “ before whom such offender shall be convicted as afore-
 “ said; and for want of sufficient distress, every such of-
 “ fender shall by such justice or justices be committed to
 “ prison, there to remain without bail or mainprize for the
 “ space of three months; and in case any such offender
 “ shall be found in any of the said isles of *Guernsey*, *Jersey*,
 “ *Alderney*, *Sark* or *Man*, and shall be lawfully convicted
 “ of such offence in any action or suit to be founded on
 “ this act, in the proper court of any of the said isles where
 “ he shall be so found, such offender shall forfeit the sum
 “ of twenty pounds; one moiety thereof to the informer,
 “ and the other moiety to the poor of the parish or place
 “ where such offender shall be found; and in default of
 “ paying such penalty, shall suffer imprisonment without
 “ bail or mainprize for the space of three months.”

+ Sect. 20. By 26. Geo. 2. c. 6. s. 20. To the end that all persons may know how to demean themselves in the premises, it is further enacted, “ That when and as often
 “ as his majesty, his heirs or successors, shall make any
 “ order or orders concerning quarantine, and the preven-
 “ tion of infection, and notify the same by proclamation,
 “ or cause the same to be published in the *London Gazette* as
 “ aforesaid; such proclamation, or order or orders in
 “ council, as aforesaid, shall be publicly read upon the
 “ next *Sunday* on which divine service shall be performed
 “ after the receipt of the same, and the first *Sunday* in every
 “ month afterwards (during the time such orders shall
 “ continue in force) immediately after the prayers in all
 “ parish churches, and other places set apart for divine
 “ worship, within such counties and places as shall be
 “ specified for that purpose in such proclamation or orders
 “ respectively.”

Orders con-
cerning qua-
rantine to be
read in
churches, &c.

+ Sect. 21. By 26. Geo. 2. c. 6. s. 21. it is further en-
 “ acted, “ That if any action or suit shall be commenced
 “ against any person or persons for any thing done in pur-
 “ suance of this present act, the defendant or defendants
 “ in such action or suit may plead the general issue, and
 “ give this act, and the special matter in evidence, at any
 “ trial to be had thereupon, and that the same was done in
 “ pursuance and by the authority of the said act; and if it
 “ shall

General issue.

Treble costs.

“ shall appear so to have been done, then the jury shall
 “ find for the defendant or defendants; and if the plaintiff
 “ shall be nonsuited, or discontinue his action, after the
 “ defendant or defendants shall have appeared; or if judg-
 “ ment shall have been given upon any verdict or demurrer
 “ against the plaintiff, the defendant or defendants shall
 “ and may recover treble costs, and have the like remedy
 “ for the same, as the defendant or defendants hath or
 “ have in other cases by law.”

Limitation of
 attainder of
 felony on this
 act.

+ *Secl.* 22. By 26. Geo. 2. c. 6. s. 22. it is provided,
 “ That no attainder of felony, by virtue of this act, shall
 “ extend to work any corruption of blood, or forfeiture of
 “ any goods, chattels, lands, tenements, or heredita-
 “ ments.”

Rex v. Harris,
 4. Term Rep.
 202.

+ *Secl.* 23. It hath been determined, that disobedience
 to such an order as is mentioned in the first section of this
 statute is an indictable offence, and punishable as a mis-
 demeanor at common law.

Rex v. Harris,
 4. Term Rep.
 202.

+ *Secl.* 24. But it does not seem to be settled, whether
 the penalties in the fifth section attach on any other than
 the captain, seamen, or passengers.

CHAPTER THE FIFTY-THIRD.

O F

SENDING A THREATENING LETTER.

OFFENCES against the *public peace* created by statute are,

1. Sending threatening letters.
2. Riot.
3. Mobs-trooping.
4. Unlawful hunting.
5. Pulling down turnpikes.
6. Destroying fences.
7. Injuring bridges.
8. Destroying banks and floodgates.

As to THE FIRST POINT, *viz.* The offence of sending threatening letters.

† *Stat. 1.* The dispersing of *bills of menace*, threatening destruction to the lives or properties of those to whom they were addressed, for the purpose of extorting money, is at the common law a high misdemeanor, punishable by fine and imprisonment. 1. Hale 567.

† *Stat. 2.* By 9. Geo. 1. c. 22. it is enacted, “ That
 “ if any person or persons shall knowingly send any letter Threatening letter.
 “ without any name subscribed thereto, or signed with a For the form
 “ fictitious name, demanding money, venison, or other of an indi-
 “ valuable thing; or shall forcibly rescue any person being ment for this
 “ lawfully in custody of any officer or other person for the offence, vide
 “ offences aforesaid; or shall by gift, or promise of money Cro. Cir.
 “ or other reward, procure another to join him or them in Com. 153.
 “ any

"any such unlawful act, such offender shall suffer death
"without benefit of clergy."

† *Stat. 3.* And it is enacted by 27. Geo. 2. c. 15.
"That if any person or persons shall knowingly send
"any letter without any name subscribed thereto, or signed
"with a fictitious name or names, letter or letters, threatening
"to kill or murder any of his majesty's subjects, or to burn
"their houses, out-houses, barns, stacks of corn or grain,
"hay or straw, though no money or venison, or other va-
"luable thing shall be demanded in or by such letter or
"letters, or shall forcibly rescue any person in lawful cus-
"tody for the same, such offender shall suffer death without
"benefit of clergy."

† *Stat. 4.* And it is further enacted by 30. Geo. 2. c. 24.
"That all persons who shall knowingly send or deliver any
"letter or writing with or without a name or names sub-
"scribed thereto, or signed with a fictitious name or names,
"letter or letters, threatening to accuse any person of any
"crime punishable by the law with death, transportation,
"or pillory, or any other infamous punishment, with a view
"or intent to extort or gain money, goods, wares, or mer-
"chandizes, from the person or persons so threatened to be
"accused, shall on conviction be put in the pillory, pub-
"licly whipped, or fined and imprisoned, or transported, not
"exceeding the space of seven years, in the discretion of the
"Court."

Girdwood's
Case, Old Bai-
ley, Feb. Sess.
1776. on a
case reserved.

† *Stat. 5.* It hath been determined, that if a person de-
liver a threatening letter to a common porter or message-
carrier, desiring him to put it into the post-office, it is evidence
that the person who delivered it knew its contents, al-
though the letter was sealed at the time it was so delivered.

Girdwood's
Case, Cases
C. L. 129.

† *Stat. 6.* It is also determined, that if a threatening
letter be delivered to a porter, or at the post-office in one
county, directed to a person living in another county, the
offender may be tried in the county in which the letter was
delivered to the person to whom it was directed.

Girdwood's
Case, Cases
C. L. 130.

† *Stat. 7.* It seems also, that if a letter of this descrip-
tion be couched in ambiguous terms, the question whether
the words it contains amount to a threat, may be referred to
the consideration of the jury (1).

(1) See the Case of Lloyd v. Maund, where it is determined, that on a plea of
the Statute of Limitations, the contents of a letter may be referred to the jury to say
whether they amount to the acknowledgment of the debt. 2. Term Rep. 760.

† *Stat. 7.*

† *Sett.* 8. It seems also, that if *A.* and *B.* his wife live as servants in the house of *C.* and *A.* write a threatening letter, and *B.* finds it on the ground, and delivers it to *C.* the person threatened, this is not *sending* a letter within the statutes 9. Geo. 1. c. 22. and 27. Geo. 2. c. 15. ; but that if there be evidence that *B.* knew the contents, it may amount to the offence of *delivering* a threatening letter within the statute 30. Geo. 2. c. 24. Hammond's Case, Old Bailey, May Sess. 1787, coram Ashhurst Justice.

† *Sett.* 9. It is determined, that a *certiorari* will not lie to the justices at sessions, to remove an indictment found before them, for any of the offences therein described, into the court of king's bench. Rex v. Smith, Cowp. 24.

CHAPTER THE FIFTY-THIRD.

CONTINUED.

O F

R I O T E R S.

Twelve persons or more, unlawfully assembled, and not dispersing after commanded by one justice, &c. by proclamation, adjudged felons without benefit of clergy.

BY 1. Geo. 1. st. 2. c. 5. IT IS RECITED, " That of late many rebellious riots and tumults have been in divers parts of this kingdom, to the disturbance of the public peace, and the endangering of his majesty's person and government, and the same are yet continued and fomented by persons disaffected to his majesty, presuming so to do, for that the punishments provided by the laws now in being are not adequate to such heinous offences; and by such rioters his majesty and his administration have been most maliciously and falsely traduced, with an intent to raise divisions, and to alienate the affections of the people from his majesty: therefore for the preventing and suppressing of such riots and tumults, and for the more speedy and effectual punishing the offenders therein," it is ENACTED, " That if any persons to the number of
 " twelve or more, being unlawfully, riotously, and tumultuously assembled together, to the disturbance of the public peace, and being required or commanded by any one
 " or more justice or justices of the peace, or by the sheriff of the county, or his under-sheriff, or by the mayor, bailiff or bailiffs, or other head-officer, or justice of the peace of any city or town-corporate, where such assembly shall be, by proclamation to be made in the king's name, in the form herein-after directed, to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, shall, to the number of
 " twelve or more (notwithstanding such proclamation made), unlawfully, riotously, and tumultuously remain or continue together by the space of one hour after such command or request made by proclamation, that then such continuing together to the number of twelve or more, after such command or request made by proclamation, shall be adjudged felony without benefit of clergy,
 " and

“ and the offenders therein shall be adjudged felons, and
 “ shall suffer death as in case of felony without benefit of
 “ clergy.”

† *Stat. 2.* By 1. Geo. 1. st. 2. c. 5. s. 2. it is enacted, How the pro-
 “ That the order and form of the proclamations that shall clamations
 “ be made by the authority of this act, shall be as here- shall be made.
 “ after followeth (that is to say), the justice of the peace,
 “ or other person authorised by this act to make the said
 “ proclamation, shall, among the said rioters, or as near
 “ to them as he can safely come, with a loud voice com-
 “ mand, or cause to be commanded silence to be, while
 “ proclamation is making, and after that, shall openly and
 “ with loud voice make or cause to be made proclamation in
 “ these words, or like in effect:

“ Our sovereign lord the king chargeth and commandeth all The procla-
 “ persons, being assembled, immediately to disperse themselves, and mation.
 “ peaceably to depart to their habitations, or to their lawful busi-
 “ ness; upon the pains contained in the act made in the first
 “ year of king George, for preventing tumults and riotous assem-
 “ blies.”

“ God save the king.”

“ And every such justice and justices of the peace, sheriff, Justices, &c.
 “ under-sheriff, mayor, bailiff, and other head-officer, to resort to
 “ aforesaid, within the limits of their respective jurisdic- the place.
 “ tions, are hereby authorised, impowered and required,
 “ on notice or knowledge of any such unlawful,
 “ riotous, and tumultuous assembly, to resort to the place
 “ where such unlawful, riotous, and tumultuous assemblies
 “ shall be, of persons to the number of twelve or more, and
 “ there to make, or cause to be made, proclamation in man-
 “ ner aforesaid.”

† *Stat. 3.* By 1. Geo. 1. st. 2. c. 5. s. 3. it is further Persons so as-
 enacted, “ That if such persons so unlawfully, riotously, sembled and
 “ and tumultuously assembled, or twelve or more of them, not dispersing
 “ after proclamation made in manner aforesaid, shall within an
 “ continue together and not disperse themselves within one hour, to be
 “ hour, that then it shall and may be lawful to and for seized.
 “ every justice of the peace, sheriff, or under-sheriff of the
 “ county where such assembly shall be, and also to and
 “ for every high or petty constable, and other peace-
 “ officer within such county, and also to and for every
 “ mayor, justice of the peace, sheriff, bailiff, and other
 “ head-officer, high or petty constable, and other peace-
 “ officer of any city or town corporate where such assem-
 “ bly

And if they
make resist-
ance, the per-
sons killing
them, &c. to be
indemnified.

“ bly shall be, and to and for such other person and per-
“ sons as shall be commanded to be assisting unto any such
“ justice of the peace, sheriff, or under-sheriff, mayor, bai-
“ liff, or other head-officer aforesaid (who are hereby
“ authorised and impowered to command all his majesty’s
“ subjects of age and ability to be assisting to them there-
“ in), to seize and apprehend, and they are hereby required
“ to seize and apprehend such persons so unlawfully,
“ riotously and tumultuously continuing together after
“ proclamation made as aforesaid, and forthwith to carry
“ the persons so apprehended before one or more of his
“ majesty’s justices of the peace of the county or place
“ where such persons shall be so apprehended, in order to
“ their being proceeded against for such their offences ac-
“ cording to law; and that if the persons so unlawfully, rio-
“ tously and tumultuously assembled, or any of them,
“ shall happen to be killed, maimed or hurt, in the dis-
“ persing, seizing or apprehending, or endeavouring to dis-
“ perse, seize or apprehend them, by reason of their resist-
“ ing the persons so dispersing, seizing or apprehending, or
“ endeavouring to disperse, seize or apprehend them, that
“ then every such justice of the peace, sheriff, under-
“ sheriff, mayor, bailiff, head-officer, high or petty consta-
“ ble, or other peace-officer, and all and singular persons,
“ being aiding and assisting to them, or any of them, shall
“ be free, discharged and indemnified, as well against the
“ king’s majesty, his heirs and successors, as against all and
“ every other person and persons, of, for, or concerning the
“ killing, maiming, or hurting of any such person or per-
“ sons so unlawfully, riotously and tumultuously assembled,
“ that shall happen to be so killed, maimed or hurt as afore-
“ said.”

Pulling down,
&c. any
church, &c.
felony with-
out benefit
of clergy.
1. W. & M.
Sess. 1. c. 18.

† *Stat. 4.* By 1. Geo. 1. st. 2. c. 5. s. 4. it is further
enacted, “ That if any persons unlawfully, riotously and tu-
“ multuously assembled together, to the disturbance of the
“ public peace, shall unlawfully and with force demolish
“ or pull down, or begin to demolish or pull down any
“ church or chapel, or any building for religious worship
“ certified and registered according to the statute made in
“ the first year of the reign of the late king *William* and
“ queen *Mary*, intituled, *An act for exempting their majesties*
“ *protestant subjects dissenting from the church of England from*
“ *the penalties of certain laws*; or any dwelling house, barn,
“ stable or other out-house, that then every such demo-
“ lishing, or pulling down, or beginning to demolish, or
“ pull down, shall be adjudged felony without benefit of
“ clergy, and the offenders therein shall be adjudged felons,
“ and

“ and shall suffer death as in case of felony without benefit of clergy.”

† *Stat. 5.* By 1. Geo. 1. st. 2. c. 5. f. 5. it is provided, “ That if any person or persons do, or shall, with force and arms, wilfully and knowingly, oppose, obstruct, or in any manner wilfully and knowingly let, hinder, or hurt any person or persons that shall begin to proclaim, or go to proclaim according to the proclamation hereby directed to be made, whereby such proclamation shall not be made, that then every such opposing, obstructing, letting, hindering, or hurting such person or persons, so beginning or going to make such proclamation as aforesaid, shall be adjudged felony without benefit of clergy, and the offenders therein shall be adjudged felons, and shall suffer death as in case of felony without benefit of clergy; and that also every such person or persons so being unlawfully, riotously and tumultuously assembled, to the number of twelve as aforesaid, or more, to whom proclamation should or ought to have been made if the same had not been hindered as aforesaid, shall likewise, in case they or any of them, to the number of twelve or more, shall continue together, and not disperse themselves within one hour after such let or hinderance so made, having knowledge of such let or hinderance so made, shall be adjudged felons, and shall suffer death as in case of felony without benefit of clergy.”

Opposing, &c. the making such proclamation, felony without benefit of clergy. Sec 4. Burr. 2073.

And persons so assembled, if the proclamation be hindered, shall nevertheless suffer as felons.

† *Stat. 6.* By 1. Geo. 1. st. 2. c. 5. f. 6. it is enacted, “ That if any such church or chapel, or any such building for religious worship, or any such dwelling-house, barn, stable, or other out-house, shall be demolished or pulled down wholly, or in part, by any persons so unlawfully, riotously and tumultuously assembled, that then, in case such church, chapel, building for religious worship, dwelling-house, barn, stable, or out-house, shall be out of any city or town, that is either a county of itself, or is not within any hundred, that then the inhabitants of the hundred in which such damage shall be done, shall be liable to yield damages to the person or persons injured and damnified by such demolishing or pulling down wholly or in part; and such damages shall and may be recovered by action to be brought in any of his majesty's courts of record at *Westminster* (wherein no escheat, protection or wager of law, or any imparlance shall be allowed), by the person or persons damnified thereby, against any two or more of the inhabitants

How the damages shall be made good, if any church, &c. be demolished, &c.

As to costs in an action founded on this clause. See 2. Will. 91.

“ of

“ of such hundred, such action for damages to any church
 “ or chapel to be brought in the name of the rector,
 “ vicar, or curate of such church or chapel that shall be
 “ so damaged, in trust for applying the damages to be
 “ recovered in rebuilding or repairing such church or
 “ chapel; and that judgment being given for the plaintiff or
 “ plaintiffs in such action, the damages so to be recovered
 “ shall at the request of such plaintiff or plaintiffs, his
 “ or their executors or administrators, be raised and le-
 “ vied on the inhabitants of such hundred, and paid to
 “ such plaintiff or plaintiffs, in such manner and form,
 “ and by such ways and means, as are provided by the
 “ statute made in the seven-and-twentieth year of the
 27. Eliz. c. 13. “ reign of queen *Elizabeth*, for reimbursing the person or
 “ persons on whom any money recovered against any hun-
 “ dred by any party robbed, shall be levied: And in case any
 “ such church, chapel, building for religious worship,
 “ dwelling-house, barn, stable, or out-house so damaged,
 “ shall be in any city or town that is either a county of it-
 “ self, or is not within any hundred, that then such da-
 “ mages shall and may be recovered by action to be
 “ brought in manner aforesaid (wherein no essoin, pro-
 “ tection or wager of law, or any imparlance shall be al-
 “ lowed), against two or more inhabitants of such city or
 “ town; and judgment being given for the plaintiff or
 “ plaintiffs in such action, the damages so to be recovered
 “ shall, at the request of such plaintiff or plaintiffs, his or
 “ their executors or administrators, made to the justices of
 “ the peace of such city or town, at any quarter-sessions
 “ to be holden for the said city or town, be raised and le-
 “ vied on the inhabitants of such city or town, and paid
 “ to such plaintiff or plaintiffs, in such manner and
 “ and form, by such ways and means, as are provided by
 “ the said statute made in the seven-and-twentieth year
 “ of the reign of queen *Elizabeth*, for reimbursing the
 “ person or persons on whom any money recovered a-
 “ gainst any hundred by any party robbed, shall be levied.”

Act to be read
 at quarter-
 sessions, &c.

† *Sec. 7.* By 1. Geo. 1. st. 2. c. 5. s. 7. it is further en-
 acted, “ That this act shall be openly read at every quarter-
 “ sessions, and at every leet or law-day.”

Prosecution
 within twelve
 months.

† *Sec. 8.* By 1. Geo. 1. st. 2. c. 5. s. 8. it is pro-
 vided, “ That no person or persons shall be prosecuted by
 “ virtue of this act, for any offence or offences committed
 “ contrary to the same, unless such prosecution be com-
 “ menced within twelve months after the offence committed.”

† *Sec.*

† *Sec. 9.* By 1. Geo. 1. ft. 2. c. 5. f. 9. it is further enacted, "That the sheriffs and their deputies, stewards and their deputies, bailiffs of regalities and their deputies, magistrates of royal boroughs, and all other inferior judges and magistrates, and also all high and petty constables, or other peace-officers of any county, stewartry, city or town, within that part of *Great Britain* called *Scotland*, shall have the same powers and authority for putting this present act in execution within *Scotland* as the justices of the peace and other magistrates afore said, respectively have by virtue of this act, within and for the other parts of this kingdom; and that all and every person and persons who shall at any time be convicted of any the offences afore-mentioned, within that part of *Great Britain* called *Scotland*, shall for every such offence incur and suffer the pain of death, and confiscation of moveables: And also that all prosecutions for repairing the damages of any church or chapel, or any building for religious worship, or any dwelling-house, barn, stable, or out-house, which shall be demolished or pulled down in whole or in part, within *Scotland*, by any persons unlawfully, riotously or tumultuously assembled, shall and may be recovered by summary action, at the instance of the party aggrieved, his or her heirs or executors, against the county, stewartry, city or borough respectively, where such disorders shall happen, the magistrates being summoned in the ordinary form, and the several counties and stewartries called by edictal citation at the market-cross of the head-borough of such county or stewartry respectively, and that in general, without mentioning their names and designations."

Sheriffs, &c. in *Scotland* to have the same power as justices, &c. have in *England*.

Punishment of persons offending in *Scotland*.

Damages of any churches, &c. pulled down, &c. in *Scotland*, how to be recovered, and of whom.

† *Sec. 10.* By 1. Geo. 1. ft. 2. c. 5. f. 10. it is provided, "That this act shall extend to all places for religious worship in that part of *Great Britain* called *Scotland*, which are tolerated by law, and where his majesty king *George*, the prince and princess of *Wales*, and their issue, are prayed for in express words."

To what places in *Scotland* this act shall extend.

† *Sec. 11.* By 9. Geo. 3. c. 29. "If any person or persons unlawfully, riotously, and tumultuously assembled together, to the disturbance of the public peace, shall unlawfully, and with force, demolish or pull down, or begin to demolish or pull down, any wind saw-mill, or other wind mill, or any water mill, or other mill which shall have been or shall be erected, or any of the works thereto respectively belonging; that then every such demolishing or pulling down, or beginning to demolish or pull down, shall be adjudged felony without benefit of clergy, and the offenders therein shall be adjudged

Felony without benefit of clergy.

“ felons, and shall suffer death, as in case of felony without
“ benefit of clergy.”

Rex v. Royce,
Easter, 7 Geo.
3. in B. R.
4. Bur. Rep.
3073.

† *Sec. 12.* It hath been determined, that if a person be present at a riot, and encourage and abet the rioters in beginning to demolish and pull down a dwelling house, by shouting and using expressions to excite the mob so to do, he is a principal in the second degree, and as such ousted of his clergy by the 1. Geo. 1. st. 2. c. 5. although *he* do not with force begin to demolish or pull down, or do any act with his own hands or person for that purpose otherwise than as aforesaid, for these acts amount to an aiding and abetting within the meaning of the statute.

Pritchard v.
Waloron,
5. Term Rep.
14. "See also
Dougl. 700.

† *Sec. 13.* It is also determined, that it is not necessary that twelve persons should be assembled to constitute a capital crime in the fourth clause of the riot act.

CHAPTER THE FIFTY-THIRD.

CONTINUED.

O F

MOSS - T R O O P I N G.

BY 43. Eliz. c. 13. " Many of the queen's subjects, dwelling in the counties of *Cumberland*, *Westmorland*, and the bishoprick of *Durham*, had been taken, some from their own houses, and others in travelling on the highway, or otherwise, and carried away as prisoners, and kept barbarously, and cruelly, until they had been redeemed by great ransoms ; and also, that then of late time there had been many incursions, robberies, and burning and spoiling of towns, villages, and houses, within the said counties, so that divers of the queen's subjects, in the said counties, had been enforced to pay a certain rate of money, corn, cattle, or other consideration, commonly called *black mail*, to divers inhabiting upon or near the borders, being men of name, and friended and allied with divers in those parts, who were commonly known to be great robbers, and spoil-takers, within the said counties, to the end thereby to be by them protected from the danger of such as used to rob and steal in those parts ;" and thereupon it is enacted by 43. Eliz. c. 13. " That whosoever shall at any time hereafter, without good and lawful warrant or authority, take any of her majesty's subjects against his or their will or wills, and carry them out of the same counties, or detain, force, or imprison him or them as prisoners, or against his or their wills, to ransom them, or to make prey or spoil of his or their person, or goods, upon *deadly feud* or otherwise : or whosoever shall be privy, consenting, aiding, or assisting unto any such taking, detaining or carrying away, or procure the taking, detaining, or carrying away of any such person or persons, prisoners as aforesaid : or whosoever shall take, receive, or carry, to the use of himself, or wittingly to the use of any other, any money, corn, cattle, or other consideration, commonly called *black mail*, for the protecting, or defending of him or them, or his or their lands, tenements, goods, or chattels, from such thefts,

4. Jac. 1. c. 1.

7. Jac. 1. c. 1.

3. Inst. 66, 67.

3. Burn. 231.

232.

4. Com. 243.

“ thefts, spoils, and robberies, as is aforesaid : or whosoever
 “ shall give any such money, corn, cattle, or other considera-
 “ tion, called *black-mail*, for such protection as is aforesaid,
 “ and shall be of the said several offences, or of any of them,
 “ indicted and lawfully convicted, or shall stand mute, or
 “ shall challenge peremptorily above the number of twenty
 “ before the justices of assizes, justices of gaol-delivery, jus-
 “ tices of *oyer and terminer*, or justices of peace, within any
 “ of the said counties, at some of their general sessions, with-
 “ in some of the said counties to be holden, shall be reputed,
 “ adjudged, and taken to be as felons, and shall suffer pains
 “ of death without benefit of clergy, &c.”

† *Seet.* 2. By 13. & 14. Car. 2. c. 22. made a public act
 by 6. Geo. 2. c. 37. and perpetual by 31. Geo. 2. c. 42.
 “ The justices of the peace of the respective counties of
 “ *Cumberland* and *Northumberland*, or the major part of them,
 “ at any general sessions, may in open court make an order
 “ for charging the inhabitants proportionally, for the se-
 “ curing the said several counties from the depredations of
 “ the *moss troopers* ; so as *Northumberland* be not charged
 “ above 500l nor *Cumberland* above 00l. a year : and they
 “ may appoint 30 men in *Northumberland*, and 12 men in
 “ *Cumberland*, under respective commanders, to apprehend
 “ offenders, under pain of fine and imprisonment for neglect
 “ of duty. But *vide* 29. & 30. Car. 2. c. 2. which obliges
 “ the justices to take security, &c.”

† *Seet.* 3. By 18. Car. 2. c. 3. “ The benefit of clergy is
 “ taken away from great, known and notorious thieves, and
 “ spoil-takers in the said counties of *Northumberland* and *Cum-*
 “ *berland*, for theft done within the same ; but the justices of
 “ assize may transport them for life.”

CHAPTER THE FIFTY-THIRD

CONTINUED.

O F

UNLAWFUL HUNTING.

BY 1. Hen. 7. c. 7. " That many great outrages, murders, insurrections and rebellions had often been occasioned by persons in great numbers with painted faces, visors, and otherwise disguised, and riotously, and in manner of war arrayed, hunting as well by night as by day ;" and thereupon it is enacted, " That as often as information shall be made of any such unlawful huntings by night, or with painted faces, to any of the king's council, or to any justice of the peace of the county, of any person suspected thereof, any of the same council, or justices to whom such information shall be made, may make a warrant to arrest such person, and may also examine him of the said hunting, and of the said doers in that behalf; and if the same person wilfully conceal the said huntings, or any person with him defective therein, that then the same concealment be felony: and if he then confesses the truth, and all that he shall be examined of, and knoweth in that behalf, that then the said offences of huntings be against the king but trespasss fineable, by reason of the same confession, at the next general sessions of the peace to be holden in the same county, by the king's justices of the same sessions, there to be sessed. And if rescous or disobedience be made to any person, having authority to do execution or justice by any such warrant, by any person, the which so should be arrested, so that the execution of the same warrant thereby be not had, that then the same rescous and disobedience be felony; and if any person or persons shall be convicted of any such huntings, with painted faces, visors, or otherwise disguised, to the intent they should not be known, or of unlawful hunting in time of night, that then the same person or persons so convicted, to have like punishment, as he or they should have, if he or they were convicted of felony."

3. Ed. 1. c. 28.
21. Edw. 1.
c. 362.
3. Inst. 76, 77.
Dalt. c. 29.
1. Hale 656
to 659.
2. Roll. 120.
133.
Co. Lit. 370.
2. Burn 263.

N. B. The several facts mentioned in this act are not to be taken as being parts of the same offence; but are every of them several offences.

Lord Hardwicke, B. R. H. 219.
(a) C. Eliz. 548.
C. Jac. 195.
2. Bac. Ab. 614.

† *Stat. 2.* By 9. Geo. 1. c. 22. made perpetual by 31. Geo. 2. c. 22. “ If any person or persons being armed with swords, fire-arms, or other offensive weapons, and having his or their faces blacked, or being otherwise disguised, shall appear in any forest, chase, park, paddock, or grounds inclosed with any wall, pale, or other fence, wherein any deer have been, or shall be usually kept;—or in any high road, open heath, common, or down,—or shall unlawfully and wilfully hunt, wound, kill, destroy, or steal any red or fallow deer—or unlawfully rob any warden (a) or place where conies or hares are usually kept,—or shall unlawfully steal or take away any fish out of any pond or river. “ Or if any person or persons (*whether armed and disguised or not*) shall unlawfully and wilfully hunt, wound, kill, destroy, or steal any red or fallow deer, fed or kept in any places in any of the king’s forests or chases, which are or shall be inclosed with pales, rails, or other fences, or in any park, paddock, or grounds inclosed, where any deer have been or shall be usually kept; (†) (1) (2) (3) (4) (5);—or shall forcibly rescue any person being lawfully in custody of any officer or other person for any the offences before mentioned;—or, if any person or persons shall by gift or promise of money, or other reward, procure any of his majesty’s subjects to join him or them in any such unlawful act, every person so offending, being thereof lawfully convicted (in any county in *England*) shall suffer death without benefit of clergy—but not to work corruption of blood nor forfeiture of land or goods.”

(†) For the offences relating to the destruction of fish made felony by this statute, see ante page 384.

(1) For the offences relating to cattle made felony by this statute, see post. ch. 34. page 607.

(2) For the offence of destroying trees made felony by this statute, see ante p. 344.

(3) For the offence of burning houses made felony by this statute, see ante page 299, and post. ch. 34.

(4) For the offence of shooting at another made felony by this statute, see post. ch. 55.

(5) For the offence of sending threatening letters, made felony by this statute, see post. ch. 55.

CHAPTER THE FIFTY-THIRD

CONTINUED.

O F

PULLING DOWN TURNPIKES.

BY 13. Geo. 3. c. 84. f. 42. IT IS RECITED, "To prevent the malicious destroying of any turnpike-gate or house, which hath been or shall hereafter be erected," Malicious destroying turnpike-gates, &c.
 AND ENACTED, "That if any person or persons whatsoever shall, either by day or night, wilfully or maliciously pull down, pluck up, throw down, level, or otherwise destroy any turnpike-gate or turnpike-gates, or any post or posts, rail or rails, wall or walls, or any chain, bar, or other fence or fences, belonging to any turnpike-gate, or any other chain, bar, or fence of any kind whatsoever, set up or erected, or hereafter to be set up or erected, to prevent passengers from passing by without paying any toll, laid, or directed to be paid, by any act or acts of parliament made for that purpose; or any house or houses erected, or to be erected, for the use of any such turnpike gate or turnpike-gates; or any crane, machine, or engine made or erected, or to be made or erected, on any turnpike-road by authority of parliament, for weighing waggons, carts, or carriages; or shall forcibly rescue any person or persons, being lawfully in custody of any officer, or other person, for any of the offences before-mentioned; that then, and in any of the said cases, every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall be transported to one Felony. of his majesty's plantations abroad for seven years, or shall be committed to prison for any time not exceeding three years, at the discretion of the judge or court before whom such offender shall be tried; and any indictment for such offences shall and may be inquired of, examined, tried, and determined in any adjacent county within that part of *Great Britain* called *England*, in such manner and form as if the facts had been therein committed."

CHAPTER THE FIFTY-THIRD

CONTINUED.

O F

DESTROYING FENCES.

Vide a critical
 commentary
 upon this act,
 2. Inst. 473.
 See also cases
 upon it, Skin-
 ner 93.
 C. Car. 281.
 440. 580.
 Dyer 47, 316.
 339.
 4. Co. 38.
 11. Co. 74.
 1. Roll. 365.

† BY 13. Edw. 1. ft. 1. c. 46. "it is enacted, "That
 "where sometime it chanceth, that one having
 "right to approve, doth then levy a dyke or an hedge, and
 "some by night or at another season, when they suppose
 "not to be espied, do overthrow the hedge or dyke, and it
 "cannot be known by verdict of the affize or jury who did
 "overthrow the hedge or dyke, and men of the towns near
 "will not indict such as be guilty of the fact, the towns near
 "adjoining shall be distrained to levy the hedge or dyke at
 "their own cost, and to yield damages."—And by 3. and
 "4. Edw. 6. c. 6. such person as shall bring an affize there-
 "upon, and have judgment to recover, shall have his da-
 "mages trebled, by the judgment of the Court."

† Sect. 2. And it is further enacted by 6. Geo. 1. c. 16.
 "That whoever shall break down, throw down, level,
 "or destroy any hedges, gates, posts, stiles, railings, walls,
 "fences, dykes, ditches, banks, or other inclosures of such
 "woods, wood-grounds, parks, chafes, or coppices, planta-
 "tions, timber-trees, fruit or other trees, thorns or quick-
 "sets, shall by 6. Geo. 1. f. 2. c. 48. be committed to the
 "house of correction for three months, and where there are
 "no houses of correction, to any other prison of the
 "county or place for four months, and whipped, and on
 "conviction, by two justices in open sessions; and such
 "lords of manors, owners and proprietors of the same,
 "that is, are, or shall be damaged thereby, shall have the
 "remedy and satisfaction from the adjoining parishes and
 "places as is given by the above recited act of 13. Edw. the
 "First."

† Sect. 3. And it is further enacted by 16. Geo. 3. c. 30.
 "Whoever shall wilfully pull down or destroy, or cause
 "to be wilfully pulled down or destroyed, the pale or pales,
 "or any part of the walls of any forest, chase, purlieu, an-
 "cient

“cient walk, park, paddock, wood, or other ground where
“any red or fallow deer shall be then kept, without the
“consent of the owner, or person chiefly intrusted with the
“custody thereof, or being otherwise duly authorised, shall
“forfeit and pay the sum of thirty pounds, on information
“upon oath before one justice, by one witness, &c. and
“whoever having been convicted shall offend a second time,
“shall, on conviction by indictment, be transported for seven
“years, provided the prosecutions be within six months.”

† *Seet. 4.* By 9. Geo. 3. c. 29. f. 3. “Whoever shall wil-
“fully or maliciously demolish, pull down or otherwise
“destroy or damage any fence made for dividing or inclosing
“any common, waste, or other lands or grounds in pursuance
“of any act of parliament, or shall cause or procure the
“same to be done, he shall be guilty of felony, and trans-
“ported for seven years. Prosecution to be commenced in
“18 months after the offence committed.”

CHAPTER THE FIFTY-THIRD

CONTINUED.

O F

IN J U R I N G B R I D G E S.

And the same
is enacted by
31. Geo. 2.
c. 10. f. 6.
respecting
London
bridge, and by
12. Geo. 1.
c. 36. f. 3. re-
specting Ful-
ham bridge.
But by
20. Geo. 2.
c. 22. the dis-
tinction of

BY 9. Geo. 1. c. 29. f. 6. for preventing the wilful and malicious damaging or destroying Westminster-bridge, or any part thereof, it is enacted, "That if any person
" or persons shall wilfully and maliciously blow up, pull
" down, or destroy the said bridge, or any part thereof, or
" attempt so to do, or unlawfully and without authority
" remove or take away any works thereto belonging, or in
" any wise direct or procure the same to be done, whereby
" the said bridge or the works thereof may be damaged, or
" the lives of the passengers endangered, such offender or of-
" fenders shall be adjudged guilty of felony, and suffer death
" *without* benefit of clergy."

Wakon bridge; by 23. Geo. 2. c. 37. of Hampton Court bridge; by 24. Geo. 2. c. 36. of Ribble bridge; by 28. Geo. 2. c. 45. of Sandwich bridge; by 29. Geo. 2. c. 86. of Blackfryars bridge; by 29. Geo. 2. c. 73. of Urse bridge; by 30. Geo. 2. c. 59. of Jeremiah's Ferry; by 30. Geo. 2. c. 63. and 31. Geo. 2. c. 48. of Old Brentford bridge; and by 31. Geo. 2. c. 59. of Trent bridge, is made single felony, and within the benefit of clergy.

CHAPTER THE FIFTY-THIRD

CONTINUED.

O F

DESTROYING BANKS

A N D

F L O O D G A T E S.

BY 22. Hen. 8. c. 11. which was repealed by 1. Edw. 6. 2. and 3. Ph. and revived by 2. and 3. Philip and Mary c. 19. IT IS & M. 4. 11. RECITED, " That divers evil disposed persons, of their perverse and evil disposition, maliciously at divers and sundry times have cut, cast down, and broken up divers parts of the dike called the new powdike in marsh-land in the county of *Norfolk*, and the broken dike, otherwise called *Oldfield* dike, by marsh-land in the isle of *Ely* within the county of *Cambridge*; by reason whereof, as well by the great abundance of the salt-water, as also by the course of the fresh water entering and coming into and by the said parts of the said ditches so broken and cast down, the ground and pastures within the country of marsh-land in the counties aforesaid, have been divers and many times drowned and surrounded with the waters aforesaid, so that no profit thereof might be taken by the owners and occupiers of the said ground and pastures within marsh-land aforesaid; by the drowning whereof the said owners and occupiers of the said ground, and the inhabitants within the said marsh-land, and the level of the same, at many and sundry times have been not only put to importunate charges and expences, to their extreme damages and costs, but also to their great undoing, have lost much of their cattle and beasts, then being and pasturing upon and within marsh-land aforesaid, to their great damage and loss, and to the great decay of the common weal of the countries adjoining to the same; and also by reason of the same waters much people have been drowned in their beds within their houses, and have lost the most part of their goods being within the same:" for the reformation whereof it is ENACTED, " That every such perverse and malicious cutting
" down

Cutting down
or breaking
up of dikes in
marsh land is
felony.

Justices of the
peace to in-
quire of of-
fenders and
award pro-
cess, &c.

“ down and breaking up of any part or parts of the said
“ dikes, or of any other bank, being parcel of the rind and
“ uppermost part of the said country of marsh-land afore-
“ said, made for the defence and salvation of the same
“ country of marsh-land, at every time and times from
“ henceforth by any person or persons committed and
“ done, otherwise than in working upon the said banks
“ or dikes, for the repairing, fortifying, and mending of the
“ same, be taken, reputed, and adjudged felony, and that
“ the offenders and doers of the same, and every of them,
“ be adjudged and reputed felons. And that the justices
“ of the peace of the said counties of *Norfolk* and *Cam-*
“ *bridge*, within the said isle, at every of their sessions
“ within the same isle and counties to be kept, by the
“ authority aforesaid have full power to cause inquiry to
“ be made of every such offence, so at any time, in form
“ aforesaid, hereafter to be committed and done, and to
“ award like process against every of the said offenders,
“ with like judgment and execution of the same, if they
“ or any of them be thereof found guilty by verdict or
“ otherwise, as the said justice hath used and accustomed
“ to do upon other felonies, being felony at the common
“ law.”

† *Sect. 2.* By 8. Geo. 2. c. 20. made perpetual by
27. Geo. 2. c. 16. “ Whoever shall wilfully or maliciously pull
“ down, pluck up, throw down, level, or otherwise destroy
“ any lock, sluice, floodgate or other works, on any navi-
“ gable river erected by authority of parliament; or forc-
“ bly rescue any person or persons in lawful custody for
“ the same, shall suffer death without benefit of clergy.”
The offence may be tried in any adjacent county, but with-
out corruption of blood, &c.

† *Sect. 3.* It is also enacted by the said statute, par. 2.
“ That whoever shall wilfully and maliciously draw or
“ pluck up any floodgate, fixed or made in any wear or
“ lock erected by authority of parliament, in or upon any
“ navigable river, for preserving the navigation thereof, on
“ conviction by one witness, before two justices of that or
“ of the adjacent county, shall be sent to hard labour for one
“ month in the house of correction;—and the hundred made
“ liable to the amount of twenty pounds, &c.”

† *Sect. 4.* And it is further enacted by 10. Geo. 2. c. 32.
“ That whoever shall unlawfully cut off, draw up, or re-
“ move and carry away, any piles, chalk, or other materials
“ which shall be driven into the ground and used for the
“ securing any marsh, or sea-walls or banks, in order to pre-
“ vent the lands, lying within the same, from being over-
“ flowed

“ flowed and damaged, shall forfeit twenty pounds ; one
 “ moiety to the informer, the other to the poor ; and in de-
 “ fault, by distress, shall be kept at hard labour for six
 “ months. Any one justice of the place, on information
 “ upon oath, may summon the offender to appear, or issue
 “ his warrant to apprehend him, and upon appearance, or
 “ non-appearance, may convict, on confession, or the oath
 “ of one witness.”

† *Secl.* 5. And it is further enacted by the above statute,
 “ That all the provisions of the Black Act of 9. Geo. 1. c. 22.
 “ for the bringing offenders, their aiders and abettors to jus-
 “ tice ; for making compensation to the party injured ; for
 “ the reward for apprehending offenders, &c. and for the
 “ more impartial punishment of the offences therein men-
 “ tioned ; together with all restrictions, limitations, and
 “ mitigations of the said act, shall extend to all cases of of-
 “ fences by breaking down or cutting down any bank or
 “ banks of any river, or any sea-bank, whereby any lands
 “ shall be overflowed or damaged.”

† *Secl.* 6. And by 6. Geo. 2. c. 37. made perpetual by
 31. Geo. 2. c. 42. “ Whoever shall unlawfully and ma-
 “ liciously break down or cut down the bank or banks of
 “ any river, or any sea-bank, whereby any lands shall be
 “ overflowed, or damaged, shall suffer death without clergy.”

† *Secl.* 7. By 27. Geo. 2. c. 19. “ Whoever shall mali-
 “ ciously cut, break down, burn, demolish, or destroy any
 “ bank, mill, engine, floodgate or sluice, erected, made, sup-
 “ ported or maintained for the purpose of benefiting the
 “ Bedford level, shall suffer death without clergy.” And
 “ further, “ Whoever shall maliciously stop, dam up, demo-
 “ lish, damage or destroy any river, drain, water-course,
 “ door, dam, bridge, or other works erected for the purposes
 “ aforesaid, on conviction before two justices for the coun-
 “ ties and shires, or either of them, shall forfeit one hundred
 “ pounds.”

† *Secl.* 8. By 4. Geo. 3. c. 12. s. 5. which recites, “ That
 the laws in being were not sufficient for the preservation of
 banks, floodgates, sluices, and other works belonging to navi-
 gable rivers,” and thereupon it is enacted, “ That whoever
 “ shall wilfully or maliciously break, throw down, damage
 “ or destroy any banks, floodgates, sluices, or other works,
 “ or open or draw up any floodgate, or do any other wilful
 “ hurt or mischief to any navigation erected by authority of
 “ parliament, so as to obstruct, hinder, or prevent the car-
 “ rying on, completing, supporting, or maintaining such
 “ navigation, may be transported for seven years.”

CHAPTER THE FIFTY-FOURTH.

O F

MAIMING CATTLE.

OFFENCES committed from motives of *malicious mischief* may be arranged under the following heads :

1. Maiming cattle.
2. Burning.
3. Destroying garments.
4. Cutting hop-binds.
5. Destroying mills.
6. Injuring collieries.
7. Destroying looms.
8. Destroying granaries.
9. Destroying knitting frames.

As to the first particular, *viz.* The offence of maiming cattle.

+ *Sect. 1.* By 37. Hen. 8. c. 6. "Whoever shall maliciously, unlawfully, and willingly cut out, or cause to be cut out, the tongue or tongues of any tame beast or beasts of any other person or persons, the said beast then being in life, shall forfeit treble damages to the party grieved, by action of trespass, and ten pounds to the king, in the name of a fine."

+ *Sect. 2.* By 22. and 23. Car. 2. c. 7. IT IS RE-
CITED, "That divers evil-disposed persons, intending the ruin and impoverishment of their fellow-subjects, had secretly in the night-time, and at other times when they thought their deeds were not known, practised the unlawful
and

and wicked courses of cutting, maiming, wounding, and killing of horses, sheep, beasts, and other cattle," AND ENACTED, for prevention thereof, " That when in any part
 " of this kingdom any person or persons shall in the
 " night-time maliciously, unlawfully, and willingly kill,
 " or destroy any horses, sheep or other cattle, of any person
 " or persons whatsoever, every such offence shall be adjudged
 " felony, and the offenders and every of them shall suffer a
 " in case of felony."

† *Stat.* 3. By 22. and 23. Car. 2. c. 7. f. 3. it is provided, " That no attainder for such offence shall work any
 " corruption of blood, loss of dower, or disinherittance of
 " heir or heirs."

The party at
 liberty to be
 transported
 for seven
 years.

† *Stat.* 4. By 22. & 23. Car. 2. c. 7. f. 4. it is further enacted, " That in case any person or persons who shall be
 " convict or attainted of felony aforesaid, (to avoid judgment
 " of death, or execution thereupon for such his offence) shall
 " make his election to be transported beyond the seas, to
 " any of his majesty's plantations; that then the justices
 " of assize, *oyer* and *terminer*, gaol-delivery, or justice of
 " the peace, before whom such offender shall be convict
 " or attain by virtue of this act, and every of them re-
 " spectively, shall cause judgment to be entered against
 " every such offender, that he be transported beyond the
 " seas to some of his majesty's plantations, in the said
 " judgment to be particularly mentioned and expressed,
 " there to remain for the space of seven years; and that
 " in pursuance of the said judgment, the sheriff or she-
 " riffs of the county or city where such offender shall
 " be so convict or attainted, shall cause the said offen-
 " der to be safely conveyed and embarked to be trans-
 " ported as aforesaid; and if any such offender shall re-
 " turn into this kingdom before the expiration of the
 " said seven years, he shall suffer death as a felon, and
 " as if no such election to be transported had been made
 " by him."

Felony to re-
 turn before.

Treble da-
 mages for
 maiming cat-
 tle, throwing
 down of in-
 closures, &c.
 in the night-
 time.

† *Stat.* 5. By 22. and 23. Car. 2. c. 7. f. 5. it is fur-
 ther enacted, That if any person or persons shall in the
 " night-time maliciously, unlawfully, and willingly maim,
 " wound, or otherwise hurt any horses, sheep, or other,
 " cattle, whereby the same shall not be killed or utterly
 " destroyed, or shall destroy any plantations of trees, or
 " throw down any inclosure, in manner aforesaid; that
 " then every such offender or offenders shall lose and for-
 " feit unto the party grieved treble the damage which he
 " or

“ or they shall thereby sustain; the same to be recovered
 “ by action of trespass, or upon the case, to be taken at the
 “ common law.”

† *Sec. 6.* By 22. & 23. Car. 2. c. 7. f. 6. it is further enacted, “ That upon the complaint and request of the party Justices pow-
 “ or parties injured in any such manner, any three or more er to inquire
 “ justices of the peace for the county, division, city, town of the offence,
 “ corporate, or place where such offence shall be committed, and punish the
 “ whereof one to be of the *quorum*, shall and may, and they offenders.
 “ are thereunto authorized and required by virtue of this
 “ act, to inquire, as well by the oaths of twelve lawful
 “ men or more of the same county as by examination of wit-
 “ nesses upon oath, or by any lawful ways or means which to
 “ them shall seem meet, of and concerning any the offences
 “ before incurred, and offenders therein; and in order
 “ thereunto, to issue out warrants, as well for the summon-
 “ ing of jurors, as for the apprehending of all such persons
 “ as shall or may be thereof suspected, and to take their
 “ examination touching the same; as also to cause all such
 “ other persons as to them shall seem likely to make dis-
 “ covery thereof, to appear before them, and to give infor-
 “ mation upon oath, of and concerning their knowledge
 “ of the premises; so as no person so to be examined by
 “ the said justices of the peace, shall be convicted, or in any
 “ wise proceeded against, for or by reason of any offence
 “ concerning which he or they shall be so examined as a
 “ witness, and shall upon such his examination make a
 “ true discovery thereof: And in case any person or per-
 “ sons, who by the said justices be thought likely to make
 “ discovery as aforesaid, shall refuse to appear, or to be ex- A witness re-
 “ mined as a witness, being duly summoned by the said jus- fusing to ap-
 “ tices in pursuance of this act; it shall and may be law- pear, shall be
 “ ful for the said justices of the peace to commit the party committed to
 “ so refusing, to the common gaol for the said county with- prison.
 “ out bail or mainprize, until he shall submit to be examined
 “ upon oath, of and concerning his knowledge touching the
 “ same offence, or the offenders by whom the same was com-
 “ mitted.”

† *Sec. 7.* By 22. & 23. Car. 2. c. 7. f. 7. it is provided, No person
 “ That no person who shall be punished for any offence shall be twice
 “ virtue of this act, shall be punished for the same offence by punished for
 “ virtue of any other act or law whatsoever; nor shall be this offence.
 “ questioned for the same, unless he be proceeded against Prosecution
 “ within six months after the offence committed.” must be within
 six months.

† *Sec. 8.* By 9. Geo. 1. c. 22. it is enacted, “ That
 “ if any person or persons shall unlawfully and maliciously
 Vol. 1. R r “ kill,

“ kill, maim, or wound any cattle ; or shall forcibly rescue
 “ any person in lawful custody for the same ; or shall by
 “ gift, or promise of money, or other reward, procure any
 “ of the king’s subjects to join him or them in such unlaw-
 “ ful act ; every person so offending shall suffer death, without
 “ benefit of clergy. And by 22. Eliz. c. 13. the hundred
 “ are liable to the amount of 200l.”

Cases in Cro. Law 63. + *Sec. 9.* It hath been determined, that the statute 9. Geo. 1. c. 22. is to be considered as an extension of the provisions of the 22. & 23. Car. 2. c. 7.

Rex vs. Pary, Cases Cro. Law, 66. + *Sec. 10.* It hath also been determined, that although an indictment thereon for stealing a mare and “ a stone colt” is good, although it do not aver them to be *cattle* within the meaning of the act.

The Case of John Midwinter and Rich. Simms, Gloucester Lent assizes 1749, on a case reserved for the opinion of the Judges, Foster C. L. 415. See also S. C. cited by Lord Mansfield, + *Sec. 11.* It hath also been determined, that if *A.* and *B.* be indicted on the statute 9. Geo. 1. c. 22. for unlawfully, maliciously and feloniously killing a mare, and it appear in evidence that *A.* with the assistance of *B.* caught the mare in the field where she was grazing, and fastened a rope about her neck, and that *B.* took hold of the rope and held it strait in order to prevent the mare getting away, or starting from the blow, while *A.* with a large sharp hook called a *bill*, gave the mare a deep wound in the belly, of which she died, that they are both equally guilty, and ousted of their clergy by the statute, although the act doth not by any express provisions take in aiders and abettors (*a*).
 Rex vs. Royce, 4. Burr. 2075. Cases C. L. 62. (*a*) But see the propriety of this decision very ably controverted by Mr. Justice Foster in his statement of this Case, Foster’s Cro. Law, App. 416.

Pearce’s Case, Cases C. L. 423. + *Sec. 12.* It hath also been determined, that to bring an offender within the penalties of these statutes, it must be proved that the maiming or the killing of the cattle charged in the indictment proceeded from a malicious and vindictive motive against the owner of the cattle so maimed or killed ; for if it be done in a moment of anger or passion against the animal itself, it is not an offence within the statutes.

CHAPTER THE FIFTY-FOURTH

CONTINUED.

O F

B U R N I N G.

THE crime of maliciously burning the house which another is in the possession of, hath been already considered under the title ARSON; I shall therefore, in this chapter, recite what other offences, by malicious incendiaries, are created felonies by statute. Ante 295 to 301.

† *Señ. 1.* And first, to repress the daring outrages that formerly prevailed upon the northern borders of the kingdom, it is, amongst other offences, enacted by 43. Eliz. c. 13. f. 2. “ That whoever shall wilfully, and of malice, burn or cause to be burned, or aid, procure, or consent to the burning of any barn, or stack of corn or grain, within *Cumberland, Northumberland, Westmorland, or Durham*, shall, on conviction at the assizes, or general session of the peace, suffer the pains of death without benefit of clergy.” See ante, page 595.

† *Señ. 2.* But these wicked courses growing into frequent and secret practice in several parts of the kingdom, it is enacted by 22. and 23. Car. 2. c. 7. “ That if any person or persons shall, *in the night-time*, maliciously, unlawfully, and willingly burn, or cause to be burnt or destroyed, any ricks or stacks of corn, hay, or grain, barns, or other houses or buildings, or kilns, the offenders shall suffer as in *cases of felony*.”

† *Señ. 3.* But this statute having made the crimes therein mentioned only single felonies, and some doubt remaining whether the crime of Arson was not intitled to the benefit of clergy, it was thought expedient to extend the provisions of the 22. and 23. Car. 2. c. 7. and it is accordingly enacted by 9. Geo. 1. c. 22. made perpetual by 31. Geo. 2. c. 42. “ That if any person or persons shall set fire to any house, barn, or out-house, or to any hovel, cock,

“ mow, or stack of corn, straw, hay, or wood ; or shall
 “ forcibly rescue any person being in lawful custody for
 “ the same ; or shall by gift, promise of money, or other
 “ reward, procure another to join him or them in any such
 “ unlawful act, every person so offending shall suffer death
 “ without clergy.” The person injured by this offence
 may sue the hundred to the amount of two hundred pounds,
 and a reward of fifty pounds is offered for apprehending, &c.
 the offender.

Black. Rep.
 343.

† *Seft.* 4. It seems, that in an indictment for burning
 on the above statute, the words “ wilfully and maliciously”
 ought to be inserted, although they are not inserted in the
 statute.

CHAPTER THE FIFTY-FOURTH

CONTINUED.

OF

DESTROYING GARMENTS.

BY 6. Geo. 1. c. 23. s. 11. it is enacted, "That if any person or persons shall, at any time or times, wilfully and maliciously assault any person or persons in the public streets or highways, with an intent to tear, spoil, cut, burn, or deface, and shall tear, spoil, cut, burn, or deface the garments or cloaths of such person or persons, that then all and every person and persons so offending, being thereof lawfully convicted, shall be, and be adjudged to be, guilty of felony; and every such felon and felons shall be subject and liable to the like pains and penalties as in case of felony; and the courts by and before whom he, she, or they shall be tried, shall have full power and authority of transporting such felons for the space of seven years, upon the like terms and conditions as are given, directed, or enacted by this or the before-recited act." 4. Geo. 1. c. 11.

† *Sec. 2.* It is said, that as this statute inflicts the punishment only when the offence is committed "*in the public streets or highways,*" without adding, "*or elsewhere,*" an assault and defacing of a garment in the play-house or other place, not a street or highway, is not within the act. Sir John Fielding's Treatise on the Penal Laws relating to the metropolis, page 317.

† *Sec. 3.* It seems also to be clear, that the assault must be made with a wilful and malicious intention "to tear, spoil, cut, burn, or deface" the garments or cloaths of the person assaulted; and therefore, if the wilful and malicious intention be rather to injure *the person* than to deface *the garments*, although in carrying such intention into execution, the garments are cut with such an instrument, and in such a way, as plainly to shew that the intention to injure the person could not be accomplished without cutting or defacing the garment, yet this is not an offence within the statute; for the destruction of the garments must be the *primary* intention of the offender, and not the *consequence* of his intention to injure the person. The case of Rhenwick, Williams, Cases Cro. Law 430.

Cafe of R.
Williams,
Cafes C. L.
340.

† *Sec. 4.* It is alfo decided, that the affault on the perfon and the tearing, fpoiling, cutting, burning, or defacing the garment, muft be at one and the fame time, and muft be fo charged in the indictment; and therefore if an indictment ftate, “that *A. B.* on the 18th of *January* “made an affault on *C. D. &c.* with intent to tear, &c. the “garments of the faid *C. D.* and that the faid *A. B.* on the “faid 18th of *January* did tear, &c. the garment of the “faid *C. D.*” without faying, “that he *then and there, &c.* did “tear the garments of the faid *C. D. &c.*” the indictment is bad; for, for any thing that appears to the contrary in the indictment, the affault might have been made on one part of the day, and the tearing of the cloaths on another part of the day.

CHAPTER THE FIFTY-FOURTH

CONTINUED.

O F

CUTTING HOP-BINDS.

BY 6. Geo. 2. c. 37. f. 6. it is enacted, "That if any
 " person or persons, during the continuance of the
 " 9. Geo. 1. c. 22. (which is made perpetual by 31. Geo. 2.
 " c. 42.) shall unlawfully and maliciously cut any hop-
 " binds growing on poles, in any plantation of hops, every
 " person or persons so offending shall suffer death without
 " benefit of clergy."

+ Sect. 2. By 10. Geo. 2. c. 32. f. 4. it is enacted, "That Provisions of
 " all the provisions in 9. Geo. 1. c. 22. for the more speedy 9. Geo. 1. c. 22.
 " and easy bringing the offenders against the said act to jus- in force, in
 " tice, and the persons who shall conceal, aid, abet, or suc- case of offence
 " cour such offenders, and for making satisfaction and against this
 " amends to all and every the person and persons, their act.
 " executors and administrators, for the damages they shall
 " have sustained or suffered by any offender or offenders
 " against the said act, and for the encouragement of persons
 " to apprehend and secure such offender and offenders, and
 " for the better and more impartial trial of any indictment
 " or information which shall be found, commenced or pro-
 " secuted for any of the offences committed against the said
 " act, together with all restrictions, limitations, and miti-
 " gations by the said act directed, shall, during the conti-
 " nuance of the said act, extend to and be of force and effect
 " in all cases of offences committed by unlawfully and ma-
 " liciously breaking down or cutting down the bank or
 " banks of any river, or any sea bank, whereby any lands
 " shall be overflowed or damaged, or by unlawfully and
 " maliciously cutting any hop-binds growing on poles in
 " any plantation of hops, or by wilfully and maliciously
 " setting on fire, or causing to be set on fire, any mine, pit,
 " or delph of coal, or cannel coal."

CHAPTER THE FIFTY-FOURTH

CONTINUED.

O F

DESTROYING MILLS.

BY 9. Geo. 3. c. 29. s. 2. IT IS RECITED, "That no effectual provision hath heretofore been made for preventing the burning of mills;" AND ENACTED, "That if
 " any person or persons shall wilfully or maliciously burn
 " or set fire to, any wind saw mill, or other wind mill, or
 " any water mill, or other mill; such person so offending,
 " being lawfully convicted thereof, shall be adjudged guilty
 " of felony without benefit of clergy, and shall suffer death
 " as in case of felony without benefit of clergy."

CHAPTER THE FIFTY-FOURTH

CONTINUED.

O F

INJURING COLLIERIES.

BY 10. Geo. 2. c. 32. it is enacted, "That if any person
 " or persons shall wilfully and maliciously set on fire,
 " or cause to be set on fire, any mine, pit, or delph of coal,
 " or cannel coal, every person so offending, being thereof
 " lawfully convicted, shall be adjudged guilty of felony,
 " and shall suffer death as in cases of felony without benefit
 " of clergy."

† *Sec.* 2. By 13. Geo. 2. c. 21. IT IS RECITED, "That persons
 it is reasonable that an adequate punishment should like-drowning
 wise be inflicted on persons who shall wilfully and mali-coal-pits, shall
 ciously destroy or damage collieries by means of water as is pay treble
 aforesaid;" AND ENACTED, "That if any person shall un-damages, and
 " lawfully, wilfully, and maliciously divert, or cause to be full costs.
 " diverted, water from any river, brook, water-course,
 " channel, or land flood, or convey, or cause to be con-
 " veyed, water into any coal work, mine, pit, or delph of
 " coal, or into any subterraneous cavities or passages, or
 " make, or cause to be made, any subterraneous cavities or
 " passages, with design thereby to destroy or damage any
 " coal work or mine, pit, or delph of coal belonging to
 " any other person or persons, or shall, for that purpose,
 " unlawfully, wilfully, and maliciously destroy or obstruct
 " any fough or sewer (which has been a fough or sewer in
 " common for fifty years) made for draining any coal work,
 " mine, pit, or delph of coal, or shall attempt or continue
 " any such mischievous practice, or shall aid or assist therein
 " in manner aforesaid; every such person shall, for every
 " such offence, forfeit and pay to the party or parties ag-
 " grieved, treble damages and full costs of suit, to be sued
 " for and recovered by action of debt, bill, plaint, or infor-
 " mation, in any of his majesty's courts of record at *West-*
minster."

† *Sec.*

Except such
coal-pits are
their own.

† *Stat.* 3. By 13. Geo. 2. c. 21. s. 2. it is provided,
“ That nothing in this act contained shall prevent or re-
“ strain, or be construed to prevent or restrain, any person
“ or persons, being the owner or owners of any fough,
“ drain, or sewer, from destroying, obstructing or diverting,
“ using or disposing of any such fough, drain, or sewer, in
“ such manner as he, she, or they respectively may now
“ lawfully do.”

CHAPTER THE FIFTY-FOURTH

CONTINUED.

O F

DESTROYING LOOMS.

BY 4. Geo. 3. c. 37. f. 16. it is enacted, “ That whoever
 “ shall break into any house, shop, cellar, vault, or
 “ other place or building, or by force enter into any house,
 “ shop, cellar, vault, or other place or building, with intent
 “ to steal, cut, or destroy any linen yarn, or any linen cloth,
 “ or any manufacture of linen yarn, belonging to any ma-
 “ nufactures, or the looms, tools, or implements used
 “ therein ; or shall wilfully or maliciously cut in pieces or
 “ destroy any such goods, either when exposed to bleach
 “ or dry, shall suffer as in cases of felony without benefit
 “ of clergy. But this act shall not extend to *Scotland* or
 “ *Ireland*.”

† *Sec.* 2. By 22. Geo. 3. c. 40. f. 1. it is further enacted,
 “ That whoever shall, by day or by night, break into any
 “ house or shop, or enter by force into any house or shop,
 “ with intent to cut or destroy any serge, or other woollen
 “ goods in the loom, or any tools employed in making
 “ thereof ; or shall wilfully and maliciously cut or destroy
 “ any such serges or woollen goods in the loom or on the
 “ rack ; or shall burn, cut, or destroy any rack on which
 “ any such serges, or other woollen goods are hanged in
 “ order to dry ; or shall wilfully and maliciously break or
 “ destroy any tools used in the making any such serges or
 “ other woollen goods, not having the consent of the owner
 “ so to do, shall be guilty of felony without benefit of
 “ clergy.”

† *Sec.* 3. By 22. Geo. 3. c. 40. f. 2. it is further enacted,
 “ That whoever, by day or by night, shall break into any
 “ house or shop, or enter by force into any house or shop,
 “ with intent to cut or destroy any velvet, wrought silk,
 “ silk mixed with any other materials, or other silk manu-
 “ facture, in the loom, or any warp, or shuttle, tools, tackle,
 “ or

“ or utensils ; or shall wilfully or maliciously cut or destroy
 “ any velvet, wrought silk, or silk mixed with any other
 “ materials, or other silk manufacture in the loom, or any
 “ warp or shute, tools, tackle, or utensils prepared or em-
 “ ployed, in or for the making thereof ; or shall wilfully
 “ and maliciously break or destroy any tools, tackle, or
 “ utensils, used in or for the weaving or making of any
 “ such velvet, wrought silks, or silks mixed with other ma-
 “ terials, or other silk goods, or silk manufacture, not
 “ having the consent of the owner so to do, shall be guilty
 “ of felony without benefit of clergy.”

† *Stat.* 4. By 22. Geo. 3. c. 40. s. 3. it is further enacted,
 “ That whoever, by day or by night, shall break into any
 “ house or shop, or enter by force into any house or shop,
 “ with intent to cut and destroy any linen or cotton, or
 “ linen and cotton mixed with any other materials, or other
 “ linen or cotton manufactures, in the loom ; or any warp
 “ or shute, tools, tackle, and utensils ; or shall wilfully and
 “ maliciously cut or destroy any linen or cotton, or linen
 “ or cotton mixed with any other materials, or other linen
 “ and cotton manufactures in the loom, or any warp or
 “ shute, tools, tackle, and utensils, prepared for, or em-
 “ ployed in the making thereof, or shall wilfully and ma-
 “ liciously break and destroy any tools, tackle, and utensils,
 “ used in and for the carding, spinning, weaving, preparing,
 “ or making in any way whatever, any such linen or cotton,
 “ or linen or cotton mixed with any other materials, or
 “ other linen and cotton goods, or linen and cotton ma-
 “ nufactures whatsoever, not having the consent of the
 “ owner so to do, shall be guilty of felony without benefit
 “ of clergy.”

CHAPTER THE FIFTY-FOURTH

CONTINUED.

O F

DESTROYING GRANARIES.

BY 11. Geo. 2. c. 22. it is enacted, “ That whoever shall
 “ wilfully and maliciously beat, wound, or use any other
 “ violence to or upon any person or persons, with intent to
 “ deter or hinder him or them from buying of any corn or
 “ grain in any market or other place within this kingdom;
 “ or shall unlawfully stop or seize upon any waggon, cart,
 “ or other carriage, or horse loaded with wheat, flour, meal,
 “ malt, or other grain, in or on the way to or from any
 “ city, market-town, or sea-port of this kingdom, and wil-
 “ fully and maliciously break, cut, separate, or destroy the
 “ same, or any part thereof, or the harness of the horses
 “ drawing the same; or shall unlawfully take off, drive
 “ away, kill, or wound any such horses, or unlawfully beat
 “ or wound the driver or drivers of such waggon, cart, or
 “ other carriage, or horse so loaded, in order to stop the
 “ same; or shall, by cutting of the sacks, or otherwise,
 “ scatter or throw abroad such wheat, flour, meal, malt, or
 “ other grain, or shall take, or carry away, spoil, or damage
 “ the same, or any part thereof; on conviction by two jus-
 “ tices of the peace, or at sessions, shall be sent to the
 “ common gaol or house of correction, to hard labour,
 “ not exceeding three months, nor less than one, and be
 “ once publicly whipped during the said confinement.”

† *Sec. 2.* By 11. Geo. 2. c. 22. s. 2. it is further enacted,
 “ That if any such person or persons so convicted shall
 “ commit any of the offences aforesaid a second time, or if
 “ any person or persons shall wilfully and maliciously pull,
 “ throw down, or otherwise destroy any store-house or
 “ granary, or other place where corn shall be then kept, in
 “ order to be exported; or shall unlawfully enter any such
 “ store-house, granary, or other place, and take and carry
 “ away any corn, flour, meal, or grain therefrom, or shall
 “ throw abroad or spoil the same, or any part thereof; or
 “ shall unlawfully enter on board any ship, barge, boat, or
 “ vessel,

“ vessel, and shall wilfully and maliciously take and carry
“ away, cast, or throw out therefrom, or otherwise spoil or
“ damage any meal, flour, wheat, or grain therein, intended
“ for exportation; every person so offending shall, on con-
“ viction, be transported for seven years; and if such con-
“ vict shall return, &c. he shall suffer death as a felon,
“ without benefit of clergy; but without corruption of
“ blood, loss of dower, or disinherittance.”

CHAPTER THE FIFTY-FOURTH

CONTINUED.

O F

DESTROYING KNITTING-FRAMES.

BY 28. Geo. 3. c. 55. s. 4. it is enacted, “ That if any Persons entering shops, &c. with an intent to destroy, or destroying any frame-work knitted pieces, to be guilty of felony.

“ person or persons shall, by day or by night, enter by force into any house, shop, or place, with an intent to cut or destroy any frame-work knitted pieces, stockings, or other articles or goods being in the frame, or upon any machine or engine thereto annexed, or therewith to be used or prepared for that purpose; or shall wilfully and maliciously cut or destroy any frame-work knitted pieces, stockings, or other articles or goods being in the frame, or upon the machine or engine as aforesaid, or prepared for that purpose; or shall wilfully and maliciously break, destroy, or damage any frame, machine, engine, tool, instrument, or utensil, used in and for the working and making of any such frame-work knitted pieces, stockings, or other articles or goods in the hosiery or frame-work knitted manufactory, not having the consent of the owner so to do, or break or destroy any machinery contained in any mill or mills used or anyway employed in preparing or spinning of wool or cotton for the use of the stocking frames; every offender, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall be transported to some of his majesty’s dominions beyond seas, for any space or term of years not exceeding fourteen years, nor less than seven years.”

CHAPTER THE FIFTY-FIFTH.

O F

M A I M I N G

THE MEMBERS OF A MAN'S BODY.

IN treating of offences against the *persons of individuals*,
I shall consider the offence,

1. Of maiming another.
2. Of shooting at another.
3. Of assaulting with intent to rob.

As to THE FIRST POINT, I shall consider,

1. What offences against the members of a man's body
are esteemed MAIMS.

2. How they are punished by the common law.
3. How by statute.

As to the first particular, *viz.* What shall be esteemed
maims.

Sec. 1. It seems, that such a hurt of any part of a S. P. C. 3.
man's body whereby he is rendered less able, in fighting, Co. Lit. 126.
either to defend himself or to annoy his adversary, is pro- 3. Inst. 62.
perly a maim. 118.

3. Bl. Com. 12.
and see Mr. Reeves's Hist. English Law, 2. vol. page 34, 35.

Sec. 2. And therefore, the cutting off or disabling 25. Edw. 3.
or weakening a man's hand or finger or striking out his pl. 94.
eye or fore-tooth, or castrating him, are said to be maims; Fitz. Cor.
but the cutting off his ear or nose, &c. are not esteemed 142. 458.
maims, because they do not weaken, but only disfigure 4. Bl. Com.
him. 206.

As to the second particular, *viz.* How such offences are
punished by the common law.

Bract. 144.
Fleta bk. 1.
c. 40.
S. P. C. 37.
3. Inst. 62. 113.
Stat. 1. 100.

Sec. 3. It is to be observed, that all *maim* is felony. It is said, that anciently castration was punished with death, and other maims with the loss of member for member. But afterwards, no maim was punished in any case with the loss of life or member, but only with fine and imprisonment.

Co. Lit. 127.

Sec. 4. By the common law also, if a person maim himself, in order to have a more specious pretence for asking charity, or to prevent his being impressed as a sailor, or enlisted as a foldier, he may be indicted, and, on conviction, fined and imprisoned.

As to the third particular, *viz.* How far maim is punishable by statute.

For offences
of maiming
cattle, vide
supra, p. 607.

† *Sec. 5.* By 37. Hen. 8. c. 6. "Whoever shall maliciously, unlawfully, and wittingly cut, or cause to be cut off, the ear or ears of any one of the king's subjects, otherwise than by authority of the law, chance-medley, sudden affray, or adventure, shall forfeit treble damages to the party grieved, by action of trespass, and ten pounds to the king, in the name of a fine."

Sec. 6. By 22. and 23. Car. 2. c. 1. it is enacted, "That if any person shall, on purpose and of malice forethought, and by lying in wait, unlawfully cut out or disable the tongue, put out an eye, slit the nose, cut off a nose or lip, or cut off or disable any limb or member of any subject of his majesty, with intention in so doing to maim or disfigure, in any the manners before-mentioned, such his majesty's subject, that then and in every such case, the person or persons so offending, their counsellors, aiders, and abettors, knowing of, and privy to the offence as aforesaid, shall be and are by the said statute declared to be felons, and shall suffer death as in cases of felony without benefit of clergy."

Sec. 7. But by 22. and 23. Car. 2. c. 1. s. 2. it is provided, "That no attainder of such felony shall extend to corrupt the blood, or forfeit the dower of the wife, or the lands, goods, or chattels of the offender."

† *Sec. 8.* If a man attack another of malice forethought, in order to murder him with a bill, or any other such like instrument, which cannot but endanger the maiming him, and in such attack happen not to kill, but only to maim him, he may be indicted on this statute, together with all those who were his abettors, &c. and it shall be left to the jury on the evidence, whether there was a design to murder by maiming, and consequently a malicious intent to maim as well as to kill, in which case the offence is within the statute, though the primary intention was to murder.

Woodburnand
Coke's Case
at the Suffolk
Assizes,
8. Geo. 1.
6. St. Tr. 212.
See 9. Geo. 1.
c. 22.

† *Sec. 9.* It has been decided, that a large transverse wound across the nose, so wide and deep as to render the bone visible, is a *slitting of the nose* within the statute 22. and 23. Car. 2. c. 1. although the nostril is not thereby perforated.

Barney Car-
roll's Case.
Cafes C. L.
53.

† *Sec. 10.* But it has been ruled, that where a husband, who had lived a long while separate from his wife, visited her and persuaded her to let him sleep with her, and took an opportunity, during the night and while she was asleep, to make a wound across his wife's throat, about three inches in length, with a razor which he had procured and concealed for the purpose, the offence was not complete; for though it was a sufficient lying in wait, yet it was not such a maim as the act requires, as both are necessary before an offender can be convicted.

Lee's Case,
O. B. July.
Sess. 1763.
coram PAR-
KER, Chief
Baron.

Tickner's
Case, Cafes
C. L. 170.

† *Sec. 11.* So also it has been said, that to follow an accomplice in picking pockets, with intent to maim any person who shall detect him, is a *lying in wait* within this statute; for a person who intends to maim another, and by deliberately watching an opportunity, carries that intention into execution, may be said to lie in wait on purpose.

Case of John
Mills, O. B.
April Sess.
1785, coram
EVERE, Chief
Baron.
Cafes C. L.
172, *notis.*

† *Sec. 12.* But it seems, that the lying in wait must be for the purpose of committing the maim; for where a person was stealing the turneps of another from his field, and, on the owner going up to him, struck him immediately on the nose, with a sharp instrument fixed into a stick of wood, which slit his nose, it was determined, that although this was a *slitting of the nose*, yet neither the malice nor the lying in wait were sufficiently clear, to bring the offence within the statute.

Tickner's
Case, O. B.
1778, on a
case reserved
for the opi-
nion of the
twelve judges.

† *Stat.* 13. If the maim comes not within any of the descriptions of the act, yet it is indictable at common law, and may be punished by fine and imprisonment; or an appeal may be brought for it at the common law, in which the party injured shall recover his damages; or he may bring an action of trespass, which kind of action hath now generally succeeded the place of appeals in smaller offences not capital. But it does not seem that in maiming there may be accessaries after the fact.

CHAPTER THE FIFTY-FIFTH

CONTINUED.

OR

SHOOTING AT ANOTHER.

THE ancient common law of England provided with such anxiety for the personal safety of the subject, that every act done against another which might in its consequences prove fatal to his existence, was construed to be felonious. Of this there are several instances in the Year-Books of *Edward the Second* and *Edward the Third* (a). In the reign of *Edward the Fourth* the maxim that *voluntas reputatur pro facto* began to grow obsolete (b); and this offence was considered as a high misdemeanor only, punishable at discretion (c). But the daring outrages of certain persons, soon after the accession of the present royal family, considered in *disguised* habits, under the appellations of the *Blacks*, made it necessary that the old law of *England* should, in some instances, be revived.

(a) 8. State Trials 292.

(b) 3. Reeves' Year Book 9. Edw. 4. pl. 28.

(c) P. Serj. Cheshire, 8. St. Tr. 292.

† *Stat. 2.* And accordingly it is enacted by 9. Geo. 1. c. 22. "That if any person or persons shall wilfully and maliciously shoot at any person in any dwelling house or other place; or shall forcibly rescue any person in lawful custody for the said offence; or shall by gift, or promise of money, or other reward, procure any other to join with him or them in such unlawful act, such offenders shall be adjudged guilty of felony, and suffer death without the benefit of clergy."

† *Stat. 3.* By 9. Geo. 1. c. 22. "Every offence done or committed contrary to this act, shall and may be enquired of, examined, tried, and determined in any county within that part of *Great Britain* called *England*, in such manner and form as if the fact had been therein committed."

Upon this act the following constructions have been made :

By all the judges in Ar- and independant, and has no relation whatever to that part
nold's case, of the act relating to the offenders being armed and dis-
10. Geo. 1. guised.
8. St. Tr. 313.

Richard Mor- + Sect. 5. SECONDLY, That a private prosecutor has an
tis's case, 2. option to prefer his indictment for the above offence in
Bl. Rep. 733. any county of *England* which shall appear to be most fa-
4. Term Rep. vourable to the ends of justice.
490.

Rex v. Count + Sect. 6. THIRDLY, It is said, that if the shooting be in
Durore, Cases a dwelling-house, it is not necessary to state the name of
Cro. Law 282. the person whose house it is ; but it is clear, that if the pro-
secutor do state the name, it must be stated truly ; and
therefore if there be a variance in the Christian name only,
it is fatal.

Gastineau's + Sect. 7. FOURTHLY, It is also clearly agreed, that to
case, Cases make an offender guilty of maliciously shooting within the
Cro. Law 323. penalties of this act, it must appear in evidence to be a
shooting under such circumstances, that if death had en-
sued, the homicide would, in construction of law, have
amounted to the crime of murder ; for otherwise the absur-
dity might follow, that the offender might be convicted of
a capital crime, although the party is living, and of a single
felony, viz. manslaughter, though the party were killed.

Rex v. Davis, + Sect. 8. FIFTHLY, It seems also to be certain, that as
Cases Crown this is a new crime, and the statute has made it consist in
Law 391. being committed not only *wilfully* but *maliciously*, it is ne-
cessary in the indictment to charge that the offender " wil-
fully and maliciously shot, &c."

Rex v. Elliott, + Sect. 9. SIXTHLY, It is also said, that before a per-
O. B. July son can be convicted upon this statute, the jury must be sa-
Sessions tisfied that the instrument was loaded with gunpowder, and
1787. with a bullet, slug, or other deadly substance ; but that it
is not necessary to give evidence of these facts specifically,
for that if they appear from the general circumstances of the
case it is sufficient.

Empson's case, + Sect. 10. SEVENTHLY, It seems also to be necessary
O. B. April to prove that the gun, or other instrument, was pointed
Sessions 1784. not merely toward but directly at the prosecutor.

See also Gan-
sell's case,

+ Sect.

† *Señ. 11.* EIGHTHLY, It is determined, that this statute The Court-
extends not only to the person or persons who actually heavers' case,
shoot at another, but also to every person who is present Cases Crown
aiding and assisting to commit the offence; for as the Law 61.
statute creates a new felony, it of course possesses all the
qualities incidental to a felony at common law.

† *Señ. 12.* It seems therefore that an indictment charg- The case of
ing several persons jointly as principals in the first degree is Gibson, Mut-
good, and that if it appear that some one person then ton, and
present did maliciously shoot at another, evidence that Wigg, Cases
some or all of the persons indicted were only guilty as prin- Cro. Law 287.
cipals in the second degree, is sufficient to convict one, or See also Rex
some, or all of the defendants on such joint charge. v. Young, 3.
Term Rep.
105.

† *Señ. 13.* It is said, however, that on this point it See the rea-
may deserve consideration, whether, *with regard to the al-* soning of Mr.
lowance of clergy, the offence of the person present aiding Justice Foster
and abetting may not, in the construction of so penal a law, on the subject,
be screened from the offence of him who actually gave in his report
the mortal wound; for although a *legal fiction* makes aiders of the case of
and abettors principals at common law, yet aiders and Rex v. Mid-
abettors are nowhere mentioned in the act, and may winter and
therefore be considered as felons not subject to the special Simms, Foster.
penalties of the act, but to the pains and disabilities of fe- Cro. Law, 2d
lons intitled to the benefit of clergy. This point, however, edit. 415 to
has not yet received a judicial determination; but it may 430.
be observed, that the benefit of clergy is taken away by the
above statute "from any person or persons" committing
the offence; and it is a rule, that although where the bene- 4. Bl. Com.
fit of clergy is taken away from the *offence*, as in murder, ch. 28. s. 3.
robbery, rape, and burglary, a principal in the second de-
gree is excluded, yet that when it is only taken away from
the person committing the offence, as in stabbing, larceny
from the dwelling-house, or privately from the person,
aiders and abettors present are not excluded unless they are 1. Hale 429.
expressly named. But it is to be recollected, that the Foster 356.
statute 9. Geo. 1. c. 22. creates a *new offence*, and that the
offences above-mentioned were *old offences* at the common
law, from which the several statutes only took away the
known privilege of clergy.

CHAPTER THE FIFTY-FIFTH.

CONTINUED.

OF

ASSAULT WITH INTENT TO ROB.

(a) 25. Edw. 3. pl. 32. THE old maxim of the criminal law, that *voluntas reputabitur pro facto* (a) continued to prevail in the reign of Henry the Fourth; and it was then agreed, that if a man was indicted that *il gisoit deprædando*, it was felony (b): but in the ninth year of Edward (c), a different doctrine began to be held; and men were no longer punished for crimes which they only meditated, but had not actually committed (d); and since that time the bare intention to commit a felony has been considered as a misdemeanor only, and punishable by fine, imprisonment, &c. (e)

(d) 25. Edw. 3. pl. 32. 27. Aflize 38. 1. Hale 532. (b) Year Book 13. Hen. 4. 85. (c) Year Book, pl. 26. b. S. P. C. 27. b. (d) Reeves' History of English Law, 3d vol. p. 413. (e) Plowden 259. Cases temp. Hardwick. 3. Inst. 68.

SECT. 1. But the punishment as a misdemeanor not being found sufficiently terrific to restrain the frequency of the offence, it is recited by 7. Geo. 2. c. 22. "That whereas many of his majesty's subjects have of late frequently been put in fear and danger of their lives, by wicked and ill-disposed persons assaulting and attempting to rob them; and whereas the punishment of such offenders is not adequate to the heinousness of the crime, nor sufficient to deter wicked persons from such attempts; to the end therefore that all persons may be deterred from committing such offences, and for the greater punishment of such offenders, and for the more effectually preventing the like mischiefs in future," it is enacted; "That if any person or persons, with any offensive weapon or instrument, unlawfully and maliciously shall assault, or shall by menaces, or in or by any forcible or violent manner, demand any money, goods, or chattels, of or from any other person or persons, with a felonious intent to rob, or commit robbery upon such person or persons, that then the offender, &c. shall be adjudged liable to be transported for seven years."

v. O. 234.

SECT.

Sec. 2. And it is also enacted, "That if such offender shall break gaol, or escape before transportation, or return before the expiration of the seven years, he shall suffer death without benefit of clergy."

Upon this act the following constructions have been made:

† *Sec. 3.* FIRST, That to compleat the crime, not only the assault, as by holding a pistol towards a coachman on his box and telling him to stop, but a demand of the money or other property must also actually be made. But in this case it was said by *Mr. Justice Chapple*, who tried the prisoner, that the demand need not be made in express terms, for that a dumb man may make a demand, as if he stop a person on the highway, and put his hat into the coach with a pistol in his hand.

The case of Peter Perfait, O.B. Dec. Sess. 1745, present C. Jus. Willes, who accorded to Chapple's opinion, and the prisoner was thereupon acquitted.

Cases Cro. Law 19. Vide Haward's Case, O. B. 1783. No. 538.

† *Sec. 4.* SECONDLY, That both the assault and the demand must be made upon the person intended to be robbed; for the words of the act are, "that if any person shall assault, &c. and demand the money, &c. of any other person, with intent to rob, or commit robbery upon, such person."

Thomas's Case, O.B. July Sess. 1784. Cases Cro. Law 171.

† *Sec. 5.* THIRDLY, That the assault must be made with an offensive weapon, and that the evidence must prove the assault was made with an offensive weapon of the same kind as that which is laid in the indictment.

Jackson's Case, Cases Cro. Law 225.

† *Sec. 6.* FOURTHLY, It is said to be sufficient in an indictment for this offence to say, "with a felonious intent to take his monies from his person, and against his will feloniously to steal, take, and carry away;" but that it would be more correct if the words "by force or violence" were added.

Rook's Case, O. B. October Sess. 1785. Mr. Sergeant Adair, Recorder.

† *Sec. 7.* But it may be doubted, whether an indictment as above described would be sufficiently certain; for it has been determined, that a warrant of commitment for having "with force and arms made an assault on the prosecutor with intent feloniously to steal, take, and carry away from the person, &c." is bad, as not clearly and specifically describing any felony; for he is not charged with having made the assault with an offensive weapon, or with having by menace, or in a violent manner, demanded money,

Rex v. Remnant, 5. Term Rep. 169.

money, &c. of the prosecutor; which are the offences mentioned in this act.

Rex v. Rem- + Sect. 8. It also seems, that an indictment on this sta-
nant, 5. Term tute must charge the offender with a felonious intent to
Rep. 169. - rob, and not merely with a felonious intent to *steal, take,*
and carry away, &c.

CHAPTER THE FIFTY-SIXTH.

DESTROYING SHIPS.

OFFENCES relating to *ships and boats* made felonies by statute are,

1. Destroying ships.
2. Surcharging boats.
3. Plundering wrecks.
4. Preventing ships being loaded.

As to THE FIRST POINT, *viz.* The offence of destroying ships.

† *Stat.* 1. By 22. & 23. Car. 2. c. 11. f. 12. IT IS RE-
CITED, "That whereas it often happeneth that masters
and mariners of ships having insured or taken upon bot-
tomry greater sums of money than the value of their ad-
venture, do wilfully cast away, burn, or otherwise destroy
the ships under their charge, to the merchants and owners
great loss; for the prevention thereof for the future, it is
enacted, "That if any captain, master, mariner, or other
officer belonging to any ship, shall wilfully cast away,
burn, or otherwise destroy the ship unto which he be-
longeth, or procure the same to be done, he shall suffer
death as a felon."

Felony for
any officer or
other person
wilfully to de-
stroy any ship.

† *Stat.* 2. By 1. Ann. st. 2. c. 9. f. 4. it is enacted, "That
if any captain, master, mariner, or other officer belong-
ing to any ship, shall wilfully cast away, burn, or other-
wise destroy the ship unto which he belongeth, or pro-
cure the same to be done, to the prejudice of the owner
or owners thereof, or of any merchant or merchants
that shall load goods thereon, he shall suffer death as
a felon."

Captain, mas-
ter, &c. wil-
fully casting
away or burn-
ing, &c. any
ship, shall suf-
fer death.

† *Stat.*

Any owner,
&c. wilfully
destroying any
ship to preju-
dice the in-
surers, shall
suffer death.

† *Stat.* 3. By 4. Geo. 1. c. 12. s. 3. it is enacted, "That
" if any owner of, or captain, master, mariner, or other
" officer belonging to any ship shall wilfully cast away,
" burn, or otherwise destroy the ship of which he is owner,
" or unto which he belongeth, or in any manner of wife
" direct or procure the same to be done, to the prejudice
" of any person or persons that shall underwrite any policy
" or policies of insurance thereon, or of any merchant or
" merchants that shall load goods thereon, he shall suffer
" death."

Wilfully de-
stroying ships,
death.

† *Stat.* 4. By 11. Geo. 1. c. 29. s. 6. IT IS RECITED,
" That whereas some doubts have arisen touching the na-
" ture of the offence provided against by the said recited act,
" and the trial and punishment to be had and inflicted for the
" same," it is therefore enacted, " That if any owner of, or
" captain, master, officer, or mariner belonging to any ship
" or vessel, shall wilfully cast away, burn, or otherwise
" destroy, the ship or vessel of which he is owner, or
" to which he belongeth, or in any wise direct or procure
" the same to be done, with intent or design to prejudice
" any person or persons that hath or shall underwrite any
" policy or policies of insurance thereon, or of any mer-
" chant or merchants that shall load goods thereon, or of
" any owner or owners of such ship or vessel, the person
" or persons offending therein, being thereof lawfully con-
" victed, shall be deemed and adjudged a felon or felons,
" and shall suffer as in cases of felony without benefit
" of clergy."

Pow's Case,
Cafes Crown
Law 42.

† *Stat.* 5. It hath been determined, on an indictment
against two persons as principals and another as accessory
before the fact, for unlawfully burning and destroying a ship,
that if it appear that the person charged as accessory was
neither owner, master, captain, nor mariner of the vessel
burned, he is not an offender within the above statutes.

CHAPTER THE FIFTY-SIXTH.

CONTINUED.

SURCHARGING BOATS.

BY 10. Geo. 2. c. 31. f. 8. For preventing the losing Number of
the lives of persons passing on the river *Thames* between passengers li-
Gravesend and *Windsor*, it is enacted, "That it shall not be mitted.
" lawful for any person or persons who shall work or na-
" vigate any tilt-boat, row-berge, or any other boat or
" wherry, for hire or gain, to receive, take into, or carry
" in any such tilt or row-berge, at one and the same time,
" any more than thirty-seven passengers, and three more
" passengers only, if brought on board by the way; nor to
" receive, take into, or carry in any other boat or wherry,
" any more than eight passengers, and two more only if
" called in by the way; nor to receive, take into, or carry
" in any ferry-boat or wherry allowed to work on *Sundays*,
" any more than eight passengers at one and the same time;
" and if any person or persons who shall work or navigate
" any such tilt-boats, row-berges, ferry-boats, or other
" boats or wherries, shall receive, take into, or carry in
" any such tilt-boats, row-berges, ferry-boats, or other
" boats or wherries, a greater number of passengers than
" what are limited respectively as aforesaid, every such per-
" son or persons so offending, and being thereof convicted
" by the oath of one or more credible witnesses or witnesses,
" or by the confession of the party or parties before the
" lord mayor of the city of *London* for the time being, or
" one or more justice or justices of the peace for the city,
" county, town-corporate, liberty, or place where the of-
" fence shall be committed, or the offender shall be found,
" or on view of any such justice or justices, shall, for the
" first offence forfeit the sum of five pounds, and for the
" second offence forfeit the sum of ten pounds; one moiety
" of such forfeitures to go to the informer, and the other
" moiety to such uses as the other penalties and forfeitures
" imposed by this act are particularly directed to be ap-
" plied; and every person or persons who shall offend in
" the

In case any
persons shall
be drowned
where a great
number is
taken in, wa-
termen trans-
ported as fel-
lons.

“ the premises a third time, shall be disfranchised for
 “ twelve months from working, rowing, or navigating
 “ any boat, wherry, vessel, or other craft, and from en-
 “ joying any the privileges the members of the said Com-
 “ pany of watermen, wherry-men, and lightermen are in-
 “ titled to, and do enjoy ; and in case any greater number
 “ of persons shall be received, taken into, or carried in any
 “ such tilt-boats, row-barges, ferry-boats, or other boats
 “ or wherries than are respectively allowed to be carried
 “ as aforesaid, and any passenger or passengers shall then
 “ be drowned, every such person or persons who shall
 “ work or navigate such tilt-boats, row-barges, ferry-boats,
 “ or other boats or wherries offending therein, and being
 “ thereof lawfully convicted, shall be deemed guilty of
 “ felony, and shall be transported as felons.”

CHAPTER THE FIFTY-SIXTH

CONTINUED.

O F

PLUNDERING SHIPWRECKS.

BY 12. Ann. ft. 2. c. 18. f. 1. it is enacted, " That Sheriffs, mayors, &c. and custom-house officers to summon men to assist ships in distress.
 " the sheriffs, justices of the peace, of every county,
 " or county of a city or town, and also all mayors, bailiffs,
 " and other head-officers of corporations and port-towns
 " near adjoining to the sea, and all constables, headboroughs,
 " tythingmen, and officers of the customs in all and every
 " such places, shall upon application made to them, or any
 " of them, by or on the behalf of any commander, or chief
 " officer of any ship or vessel of any of her majesty's sub-
 " jects, or others being in danger of being stranded or run
 " on shore, or being stranded or run on shore, are hereby
 " impowered and required to command the constables of
 " the several ports within her majesty's dominions, near-
 " est to the sea-coasts where any such ship or vessel shall
 " be in danger as aforesaid, to summon and call toge-
 " ther as many men as shall be thought necessary to the
 " assistance and for the preservation of such ship or vessel
 " so in distress as aforesaid, and their cargoes ; and that
 " if there shall be any ship or vessel, either man of war or
 " merchant's ship, belonging to her majesty, or any of her
 " subjects, riding at anchor near the place where such ship
 " or vessel is in distress or danger as aforesaid, the officers All ships to assist,
 " of the customs, and constables above-mentioned, or any
 " of them, are hereby impowered and required to demand
 " of the superior officers of such ship or vessel so riding at
 " anchor as aforesaid, assistance by their boats, and such
 " hands as they can conveniently spare, for the said service
 " and preservation of the said ship or vessel so in distress as
 " aforesaid ; and that in case such superior officer of such
 " ship or vessel riding at anchor as aforesaid, shall refuse
 " or neglect to give such assistance, he shall forfeit for the on forfeiture of 100l.
 " same the sum of one hundred pounds, to be recovered
 " by the superior officer of the said ship or vessel so in dis-
 " tress as aforesaid, together with their costs of suit, in any
 " of

" of her majesty's courts of record, by action, debt, bill, plaint, or information, wherein no *essoins*, *wager of law*, or protection shall be allowed."

Making holes in the ship, &c. felony.

† *Stat. 2.* By 12. Ann. st. 2. c. 18. s. 5. it is further enacted, " That if any person or persons shall make, or be assisting in the making any hole in the bottom, side, or any other part of any ship or vessel so in distress as aforesaid, or shall steal any pump belonging to any ship or vessel so in distress as aforesaid, or shall be aiding or abetting in the stealing such pump as aforesaid, or shall wilfully do any thing tending to the immediate loss or destruction of such ship or vessel, such person or persons shall be and are hereby made guilty of felony without benefit of his, her, or their clergy."

Persons convicted of plundering shipwrecked goods, &c. to suffer death.

† *Stat. 3.* By 26. Geo. 2. c. 19. it is enacted, " That if any person or persons shall plunder, steal, take away or destroy any goods, or merchandizes, or other effects, from or belonging to any ship or vessel of his majesty's subjects, or others, which shall be in distress, or which shall be wrecked, lost, stranded or cast on shore in any part of his majesty's dominions (whether any living creature be on board such vessel or not), or any of the furniture, tackle, apparel, provision, or part of such ship or vessel; or shall beat or wound with intent to kill or destroy, or shall otherwise wilfully obstruct the escape of any person endeavouring to save his or her life from such ship or vessel, or the wreck thereof; or if any person or persons shall put out any false light or lights with intention to bring any ship or vessel into danger; then such person or persons so offending shall be deemed guilty of felony, and being lawfully convicted thereof, shall suffer death as in cases of felony without benefit of clergy."

Where goods of small value be stolen, petit larceny.

† *Stat. 4.* By 26. Geo. 2. c. 19. s. 2. it is provided, " That when goods or effects of small value shall be stranded, lost or cast on shore, and shall be stolen without circumstances of cruelty, outrage or violence; then and in such cases it shall be lawful for any person or persons to prosecute for such offence by way of indictment for petit larceny; and the offenders being thereof lawfully convicted shall suffer such punishment as the laws in cases of petit larceny do enjoin or require."

Where oath shall be made of plunder, &c. contrary to 12. Ann. st. 2. c. 18. and examination be delivered to clerk of the peace, he is to prosecute.

† *Stat. 5.* By 26. Geo. 2. c. 19. s. 8. it is enacted, " That if oath shall be made before any magistrate, lawfully empowered to take the same, of any such plunder or theft,

“*next*, and the examination in writing thereupon taken shall be delivered to the clerk of the peace of the county, riding or division wherein such fact shall be committed, or to his deputy; or if oath shall be made before any such magistrate of the breaking any ship, contrary to the aforesaid act made in the twelfth year of the reign of her said late majesty queen *Anne*, and the examination in writing thereupon taken shall be delivered to such clerk of the peace or his deputy; then such clerk of the peace shall cause the offender or offenders in any the said cases to be forthwith prosecuted for the same, either in the county where the fact shall be committed, or in any county next adjoining; in which adjoining county any indictment may be laid by any other prosecutor; and if the fact be committed in *Wales*, then the prosecution shall or may be carried on in the next adjoining *English* county; and the necessary charges of such prosecutions by the clerk of the peace shall be paid by the treasurer of the county, riding or division where the fact shall be committed, to such amount as the justices of the peace in their general or quarter sessions shall order and ascertain the same; and if such clerk of the peace shall neglect or refuse to carry on such prosecution in due manner, he shall forfeit one hundred pounds for every such offence, to any person or persons who shall sue for the same, by action of debt, bill, plaint or information, in any of his majesty’s courts of record at *Westminster*; in which action no essoin, protection, wager of law, or more than one imparlance shall be allowed.”

† *Sect. 6.* By 26. Geo. 2. c. 19. s. 9. it is further enacted, “That the commissioners of the land-tax, the deputy-sheriff, the coroners of excise in each county, riding and division, shall be proper officers for putting in execution this present act made in the twelfth year of the reign of her late majesty queen *Anne*, together with those therein respectively named for that purpose.” Officers for putting this and 12. Ann. st. 2. c. 18. in execution.

† *Sect. 7.* By 26. Geo. 2. c. 19. s. 10. IT IS RECITED, “That by an act made in the third year of his late majesty King *George the First* (intituled, *An act for the better regulating of pilots, for the conducting of ships and vessels from Dover, Deal, and the isle of Thanet, up the river of Thames and Medway*), it is enacted, that the lord warden of the Cinque Ports for the time being shall nominate and appoint, by an instrument under his hand and seal, three or more substantial persons in each of the Cinque Ports, two ancient towns and their members, to adjust and determine, within the space of twelve hours, differences which shall or may arise within 3. Geo. 2. c. 13.

Officers for
putting this
and 12. Ann.
in execution
within the li-
berty of the
Cinque Ports,
&c.

within the jurisdiction of the Cinque Ports, relating to the salvage of anchors and cables, from which vessels shall or may be forced by extremity of weather:" and hereby EN-
ACTED, " That the lord warden of the Cinque Ports for
" the time being, and the lieutenant of *Dover castle* for the
" time being, and the deputy warden of the Cinque Ports
" for the time being, and the judge official and commissary
" of the court of admiralty of the Cinque Ports, two an-
" cient towns, and the members thereof, for the time being,
" and all and every of them, and all and every other person
" and persons appointed or to be appointed by the lord
" warden of the Cinque Ports for the time being, pursuant
" to the said act made in the third year of his late majesty's
" reign, shall be the persons to put in execution, within the
" liberty and jurisdiction of the Cinque Ports, two ancient
" towns, and their members, all the powers and authorit
" given and granted in and by this act, and in and by the
" before-mentioned act of parliament made in the twelfth
" year of her said late majesty queen *Anne* ; and also in and
" by the said act made in the fourth year of the reign of his
" late majesty King *George the First* ; and also shall and may
" execute, perform and do, within the jurisdictions afore-
" said, all the acts, matters and things contained in this and
" the before-mentioned statutes, in like and as full and am-
" ple manner, to all intents and purposes, as any justice
" or justices of peace, or any other person or persons, are
" by this and the said acts appointed or authorised to do in
" any other part of the kingdom."

Rex v. Parry
and Roberts,
Salop Sum-
mer assizes
1774, in a
case reserved.

† *Stat. 8.* It hath been decided, that an offence against these statutes committed in *Anglesea*, may be tried in *Shropshire*, as the next adjoining *English* county to *Anglesea*.

CHAPTER THE FIFTY-SIXTH

CONTINUED.

O F

PREVENTING SHIPS

B E I N G

L O A D E D.

BY 33. Geo. 3. c. 67. IT IS RECITED, " That many seamen, keelmen, casters, and ship carpenters, have of late assembled themselves in great numbers, and have committed many acts of violence ; which practices, if continued, may occasion great loss and damage to individuals, and injure the trade and navigation of this kingdom : " for the better preventing such violent and injurious practices, and more effectually punishing such offenders, IT IS ENACTED, " That if any seamen, keelmen, casters, ship carpenters, or other persons, riotously assembled together to the number of three or more, shall unlawfully and with force prevent, hinder, or obstruct the loading or unloading, or the sailing or navigating, of any ship, keel, or other vessel, or shall unlawfully and with force board any ship, keel, or other vessel, with intent to prevent, hinder or obstruct the loading or unloading, or the sailing or navigating of such ship, keel, or other vessel, every seaman, keelman, caster, ship carpenter, and other person, being lawfully convicted of any of the offences aforesaid, upon any indictment to be found against him, her, or them, in any court of oyer and terminer, or general or quarter sessions of the peace, to be holden respectively in and for the county, shire, riding, division or district, wherein the offence was committed, shall be committed either to the common gaol for the same county, shire, riding, division, or district, there to continue and remain without bail or mainprize, or to the house of correction for the same county, shire, riding, division, or district, there to continue and remain without bail or mainprize, and to be kept to hard labour for any term not exceeding twelve calendar months, nor less than six calendar months, in either case respectively."

Seamen, &c. riotously assembled, who shall forcibly prevent the loading, &c. of any vessels, &c. to be committed to prison ;

as also any
such persons
who shall for-
cibly prevent
others from
working, &c.

† *Stat. 2.* By 33. Geo. 3. c. 67. s. 2. it is further enacted, "That if any seaman or seamen, keelman or keelmen, caster or casters, ship carpenter or ship carpenters, or other person or persons, shall unlawfully and with force prevent, hinder, or obstruct any seaman or seamen, keelman or keelmén, caster or casters, ship carpenter or ship carpenters, from working at, employing himself in, or exercising his lawful trade, business, or occupation respectively, or shall wilfully and maliciously assault, beat or wound, or use or commit any bodily violence or hurt to or upon any seaman or seamen, keelman or keelmén, caster or casters, ship carpenter or ship carpenters, with intent to deter, prevent, hinder, or obstruct such seaman or seamen, keelman or keelmén, caster or casters, ship carpenter or ship carpenters, from working at, employing himself in, or exercising his lawful trade, business or occupation respectively; every seaman, keelman, caster, ship carpenter, and other person, being lawfully convicted of any of the offences last-mentioned, upon any indictment to be found against him, her, or them, in any court of *oyer and terminer*, or general or quarter sessions of the peace to be holden respectively in and for the said county, shire, riding, division, or district, wherein the offence was committed, shall be committed, either to the common gaol for the same county, shire, riding, division, or district, there to continue and remain, without bail or mainprize, or to the house of correction for the same county, shire, riding, division, or district, there to continue and remain, without bail or mainprize, and to be kept to hard labour, for any term not exceeding twelve calendar months, nor less than six calendar months, in either case respectively."

Persons offend-
ing a second
time, to be
guilty of fe-
lony.

† *Stat. 3.* By 33. Geo. 3. c. 67. s. 3. it is further enacted, "That if any seaman, keelman, caster, ship carpenter or other person, shall be convicted of any of the offences aforesaid in pursuance of this act, and shall afterwards offend again in like manner, every such seaman, keelman, caster, ship carpenter, and other person so offending again in like manner, and being lawfully convicted thereof, upon any indictment to be found against him, her, or them, in any court of *oyer and terminer*, or general or quarter sessions of the peace respectively to be holden in and for the county, shire, riding, division, or district, wherein the offence was committed, shall, for such second and every subsequent offence, be adjudged guilty of felony, and shall be transported to some of his majesty's dominions beyond the seas, for any space of time or term of years not exceeding fourteen years, nor less than seven years."

† *Stat.*

† *Sect. 4.* By 33. Geo. 3. c. 67. f. 4. it is provided, And not to extend to matters done by the authority of his majesty.
 “ That none of the pains, penalties, or punishments herein-
 “ before inflicted, or authorized to be inflicted, shall be
 “ deemed, construed, or taken to extend to any act, deed,
 “ matter, or thing whatsoever, committed, done, or suffered
 “ in the service, or under or by virtue of the authority of
 “ his said majesty, or his successors; any thing herein con-
 “ tained to the contrary thereof in anywise notwithstanding.”

† *Sect. 5.* By 33. Geo. 3. c. 67. f. 5. it is enacted, Seamen, &c. wilfully setting fire to any ship, to suffer death;
 “ That if any seaman or seamen, keelman or keelmen, cas-
 “ ter or casters, ship carpenter or ship carpenters, or other
 “ person or persons, shall wilfully and maliciously burn or
 “ set fire to any ship, keel, or other vessel, every person so
 “ offending, and being thereof lawfully convicted, in any
 “ court of *oyer and terminer*, to be holden in and for the
 “ county, shire, riding, division or district wherein the of-
 “ fence was committed, shall be adjudged guilty of felony
 “ without benefit of clergy, and shall suffer death as in cases
 “ of felony without benefit of clergy.”

† *Sect. 6.* By 33. Geo. 3. c. 67. f. 6. it is further enacted, and destroying or damaging them by any other means, to be transported.
 “ That if any seaman or seamen, keelman or keelmen, or
 “ caster or casters, ship carpenter or ship carpenters, or
 “ other person or persons, shall wilfully and maliciously de-
 “ stroy or damage any ship, keel, or other vessel, (otherwise
 “ than by fire), every seaman, keelman, caster, ship carpen-
 “ ter, and other person so offending, and being thereof
 “ lawfully convicted upon any indictment to be found against
 “ him, her, or them, in any court of *oyer and terminer*, or
 “ general or quarter sessions of the peace to be holden re-
 “ spectively in and for the county, shire, riding, division,
 “ or district wherein the offence was committed, shall be
 “ adjudged guilty of felony, and shall be transported to some
 “ of his majesty's dominions beyond the seas, for any space
 “ of time or term of years not exceeding fourteen years, nor
 “ less than seven years.”

† *Sect. 7.* By 33. Geo. 3. c. 67. f. 8. it is provided, Prosecutions to be commenced with- in a year.
 “ That no person or persons shall be prosecuted by virtue
 “ of this act, for any of the offences aforesaid, unless such
 “ prosecution be commenced within twelve calendar months
 “ after the offence committed.”

CHAPTER THE FIFTY-SEVENTH

O F

PERSONATING SEAMEN

A N D

GREENWICH PENSIONERS.

OFFENCES against *sailors* and *soldiers* made felonies by statute are,

1. Personating seamen and Greenwich pensioners.
2. Wandering as sailors.
3. Desertion from the army.

As to THE FIRST POINT, *viz.* The offence of personating seamen.

† *Stat.* 1. By 31. Geo. 2. c. 10. s. 24. IT IS RECITED, "That divers wicked practices have been carried on, by personating and falsely assuming the names and characters of officers, seamen and others, intitled, or supposed to be intitled to wages, pay or other allowances of money, or prize money, for serving on board of ships or vessels of the royal navy, and by forging and counterfeiting letters of attorney, bills, tickets, assignments, last wills and other authorities and powers, from such officers and seamen, and by falsely taking out probate of wills and letters of administration to such officers and seamen;" AND ENACTED, "That whoever willingly and knowingly shall personate, or falsely assume the name or character of, or procure any other to personate, or falsely to assume the name or character of any officer, seaman or other person, intitled or supposed to be intitled to any wages, pay or other allowances of money, or prize money, for service done on board of any ship or vessel of his majesty, his heirs or successors; or the executor or administrator, wife, relation or creditor of any such officer or seaman, or other person, in order to receive any wages, pay, or other allowances of money,

Penalty of personating seamen,

T 14

" or

or of forging
letters of at-
torney, &c. or
making a false
oath to obtain
probate of any
will, &c. of
such persons,
is death.

“ or prize money, due, or supposed to be due or payable,
“ for or on account of the services of any such officer or
“ seaman, or other person as aforesaid ; or shall forge or
“ counterfeit, or procure to be forged or counterfeited, any
“ letter of attorney, bill, ticket, certificate, assignment, last
“ will, or any other power or authority whatsoever, in or-
“ der to receive any such wages, pay, or other allowances
“ of money, or prize money, due, or supposed to be due, to
“ any such officer or seaman, or other person as aforesaid ;
“ or shall willingly and knowingly take a false oath, or
“ procure any other person to take a false oath, to obtain
“ the probate of any will or wills, or to obtain letters of
“ administration, in order to receive the payment of any
“ wages, pay, or other allowances of money, or prize money,
“ due, or that were supposed to be due, to any such officer,
“ seaman or other person as aforesaid, who has really serv-
“ ed, or was supposed to have served on board of any ship or
“ vessel of his majesty, his heirs or successors ; every such
“ person so offending, being lawfully convicted of any such
“ offence or offences, shall be deemed guilty of felony, and
“ shall suffer death as a felon, without benefit of clergy.”

Treasurer,
and other of-
ficers of the
navy, impow-
ered to act as
justices in any
of the cases
here men-
tioned.

+ *Stat. 2.* By 9. Geo. 3. c. 30. s. 5. “ For the more
speedy and effectual bringing to justice persons who shall falsely
assume the names or characters of officers or seamen, or other
persons ; or shall forge or counterfeit, or cause to be forged
or counterfeited, any letter of attorney, bill, ticket, certifi-
cate, assignment, last will, or other authority to receive any
wages, pay, or other allowance, due to any officer, seaman,
or other officer, in, or who has been, or shall be in, his ma-
jesty’s service ; or shall utter or publish the same as true ; or
who shall be guilty of stealing or embezzling his majesty’s
naval stores :” it is ENACTED, “ That it shall and may be
“ lawful to and for the treasurer, comptroller, surveyor,
“ clerk of the acts, or any commissioner of the navy for the
“ time being, and they are hereby respectively authorised
“ and empowered, from time to time, in all places whatso-
“ ever, to do, perform, exercise, and execute the office and
“ duty of a justice or justices of the peace, to all intents and
“ purposes whatsoever, in causing any person or persons
“ who shall be charged with forging or counterfeiting, or
“ procuring to be forged or counterfeited, any letter of at-
“ torney, bill, ticket, certificate, assignment, last will, or
“ other power or authority ; or with uttering or publishing
“ the same as true, in order to receive any wages, pay, or
“ other allowance, due to any officer, seaman, or other per-
“ son, who is or has been, or shall hereafter be, in the service
“ of his majesty, his heirs or successors ; or with taking, or
“ procuring false oaths to be taken, for any of the purposes
“ afore-

“aforesaid; or to obtain a probate of any will, or letters of
 “administration, in order to receive such wages, pay, or other
 “allowance; or with stealing or embezzling of any naval
 “stores, the property of his majesty, his heirs or successors;
 “to be apprehended, committed, and prosecuted, for the
 “same; and all constables, headboroughs, keepers of gaols
 “and prisons, and all other officers whatsoever, shall, and
 “they are hereby respectively required, from time to time,
 “diligently to execute, perform, and obey, all such warrant
 “and warrants as shall be made, directed, issued, or given
 “to them, or any of them, by any one or more of the per-
 “sons aforesaid, touching any of the matters and things
 “herein-before contained.”

† *Stat. 3.* By 3. Geo. 3. c. 16. §. 6. IT IS RECITED, ^{Penalty of}
 “That divers wicked practices may be carried on by persons ^{personating,}
 “knowingly and willingly personating and falsely assuming ^{&c.}
 “the name and character of any out-pensioner of the said hos-
 “pital, in order to receive the money due to any such out-
 “pensioner, on account of his out-pension;” AND ENACTED,
 “That whosoever willingly and knowingly shall personate
 “or falsely assume the name or character of, or procure any
 “other to personate or falsely to assume the name and cha-
 “racter of any person intitled, or supposed to be intitled, as
 “an out-pensioner, to any out-pension or allowance of mo-
 “ney from the commissioners or governors of the said hos-
 “pital, in order to receive the money due, or supposed to be
 “due, on such out-pension; every such person so offending,
 “and being lawfully convicted of any such offence or of-
 “fences, shall be deemed guilty of felony, and suffer death
 “as a felon, without benefit of clergy.”

CHAPTER THE FIFTY-SEVENTH

CONTINUED.

O F

W A N D E R I N G S A I L O R S .

BY 39. Eliz. c. 17. it is enacted, " That all idle and wandering soldiers or marines, or idle persons which shall be wandering as soldiers or mariners, shall settle themselves in some service, labour, or other lawful course of life, without wandering, or otherwise repair to the places where they were born, or to their dwelling places, if they have any, and there remain, betaking themselves to some lawful trade or course of life, as aforesaid; upon pain, that all persons offending contrary to this act, shall suffer as in case of felony without clergy."

† Sect. 2. By 39. Eliz. c. 17. s. 2. it is further enacted, " That every idle and wandering soldier or mariner, which, coming from his captain from the seas, or from beyond the seas, shall not have a testimonial under the hand of some one justice of the peace, of, or near, the place where he landed, setting down therein the place and time where and when he landed, and the place of his dwelling or birth, unto which he is to pass as aforesaid, and a convenient time therein limited for his passage, or having such testimonial, shall wilfully exceed the time therein limited, above fourteen days: And also, as well every such idle and wandering soldier or mariner, as every other idle person wandering, as soldier or mariner, which shall at any time hereafter forge or counterfeit any such testimonial, or knowingly have with him or them any such testimonial forged or counterfeited as aforesaid, knowing the same to be counterfeited or forged; in all these cases, every such act or acts to be felony, and the offenders to suffer, as aforesaid, without any benefit of clergy."

† Sect. 3. By 39. Eliz. c. 17. s. 3. it is further enacted, " That it shall be lawful for the justices of assize, justices
" of

“ of gaol delivery, and the justices of peace of every county,
 “ and all justices of peace in towns corporate, having au-
 “ thority to hear and determine felonies, to hear and de-
 “ termine all such offences in their general sessions, and to
 “ execute the offenders, which shall be convicted before
 “ them, as in cases of felony is accustomed, except some
 “ honest freeholder, &c. will take such offender into his
 “ service for one whole year, and also be bound by recog-
 “ nizance of ten pounds, to keep the said person one whole
 “ year, and bring him to the next sessions for the peace and
 “ gaol delivery next ensuing after the said year; and if any
 “ such person so retained depart within the year, without the
 “ licence of him that so retained him, then to be indicted,
 “ tried, and judged as a felon, and not to have the benefit
 “ of clergy.”

† *Sec. 4.* By 39. Eliz. c. 17. f. 4. it is provided, “ That
 “ if any such idle and wandering person as aforesaid, shall
 “ happen to fall sick by the way, so that by reason of his
 “ weakness he cannot travel to his journey’s end within the
 “ time limited within his testimonial, no such person to be
 “ within the danger of this statute, so as he settle himself
 “ in some lawful course of life as aforesaid, or repair as
 “ aforesaid to the place where he was born, or was last
 “ abiding, within convenient time after the recovery of his
 “ sickness, and there remain as aforesaid.”

† *Sec. 5.* By 39. Eliz. c. 17. f. 5. it is also provided,
 “ That if such soldier or mariner repairing to his place of
 “ birth, &c. cannot get work, he shall be set to work by
 “ two justices of peace.”

† *Sec. 6.* By 39. Eliz. c. 17. f. 6. it is also provided,
 “ That if such soldier or mariner resort to some justice of
 “ the peace next adjoining to his place of landing, or to
 “ seek his direct way home, and make known unto the said
 “ justice his poverty; that the said justice, upon perfect
 “ notice thereof had, may license the same soldier or mari-
 “ ner to pass the next and direct way to the place where he
 “ is to repair, and to limit him so much time only, as shall
 “ be necessary for his travel thither; and that in such case
 “ his licence being so made, and he pursuing the form of
 “ such his licence, shall and may, for his necessary relief in
 “ his travel, ask and take the relief that any person shall wil-
 “ lingly give him.”

† *Sec. 7.* By 17. Geo. 2. c. 5. it is also enacted, with an
 exception of the provisions of 39. Eliz. c. 17. “ That all
 “ persons wandering abroad and begging, pretending to be
 “ soldiers,

“ soldiers, mariners, seafaring men, shall be deemed rogues
 “ and vagabonds, and punished as the act directs, with
 “ whipping, imprisonment, &c.”

Soldiers and
 mariners,
 wandering
 and begging,
 to be deemed
 vagabonds.

† *Stat.* 8. But by 32. Geo. 3. c. 45. s. 7. IT IS RECITED,
 “ That soldiers travelling from one place to another, having
 a certificate from their officers, or the secretary at war, are
 permitted to beg, and that mariners or seafaring men dis-
 charged are licensed to beg, by some testimonial or writing
 under the hand and seal of a justice of the peace : and whereas
 such permission to beg is highly improper ;” therefore IT IS
 ENACTED, “ That every soldier and mariner wandering
 “ abroad and begging, shall be deemed a rogue and vagabond
 “ within the meaning of the said act.”

CHAPTER THE FIFTY-SEVENTH

CONTINUED.

OF

D E S E R T I O N.

BY 18. Hen. 6. c. 19. it is enacted, "That soldiers retained
 " in the manner prescribed by the act, departing from
 " their captains without licence, shall be guilty of felony."
 But this statute is now of little use, because the method of
 retaining soldiers therein referred to is disused.

† *Sec. 2.* However by 7. Hen. 7. c. 1. and 3. Hen. 8.
 c. 5. still in force, "If any soldier, being no captain imme-
 " diately retained with the king, who shall be in wages and
 " retained, or take any prest to serve the king upon the
 " sea, or upon the land beyond the sea, depart out of the
 " king's service, without licence of his captain, he shall
 " suffer as a felon, without the benefit of the clergy. And
 " all justices of peace in every shire in *England*, where any
 " such offenders be taken, have power to enquire of the said
 " offences, and the same to hear and determine, as they may
 " do of felony, trespasses, and of other offences expressed in
 " the king's commission to them made, as though the said
 " offences were done in the same shire."

† *Sec. 3.* And by 2. Edw. 6. c. 2. "If any soldier
 " serving the king in his wars, in any his dominions, or on
 " the seas, or beyond the seas, or in *Scotland*, depart without
 " licence of the lieutenant, or admiral, or captain, &c. with
 " booty, or otherwise, being in the enemy's country, or
 " elsewhere in the king's service, or out of any garrison,
 " where he shall be appointed to serve, he shall be adjudged
 " a felon, and excluded from his clergy; and the justices of
 " every shire where such offender shall be taken, may en-
 " quire of and determine the offence, &c."

† *Sec. 4.* By 1. Geo. 1. st. 2. c. 47. it is enacted, Persons per-
 suading sol-
 diers to desert,
 shall forfeit
 40l.
 "That if any person or persons whatsoever (other than
 " such as are or shall be enlisted as soldiers, against whom
 " sufficient remedy is already provided by law) shall, in
 " Great

“ *Great Britain or Ireland, or the isles of Jersey or Guernsey,*
 “ by words or other means whatsoever, directly or indi-
 “ rectly, persuade or procure any soldier or soldiers in the
 “ service of his majesty, his heirs or successors, to desert or
 “ leave such service, or shall go about and endeavour in
 “ manner aforesaid, to persuade, prevail on, or procure such
 “ soldier or soldiers to desert or leave such service as afore-
 “ said, every such person or persons so offending as afore-
 “ said, and being thereof lawfully convicted, shall, for
 “ every such offence, forfeit to his majesty, his heirs or
 “ successors, or to any other person or persons who shall
 “ sue for the same, the sum of forty pounds, to be recovered
 “ by bill, plaint, or information, in any of his majesty’s
 “ courts of record at *Westminster*, wherein no essoin, pro-
 “ tection, or wager of law shall be allowed; and if it shall
 “ happen that any such offender so convicted as aforesaid,
 “ hath not any goods and chattels, lands or tenements, to
 “ the value of forty pounds, to pay and satisfy the same, or
 “ that from the circumstances and heinousness of the crime
 “ it shall be thought proper and convenient, the Court,
 “ before which the said conviction shall be made, as afore-
 “ said, shall award the said offender to prison, there to re-
 “ main for any time not exceeding six months, without
 “ bail or mainprize, and also to stand in the pillory for the
 “ space of one hour, in some market-town next adjoining
 “ to the place where the offence was committed, in open
 “ market there, or in the market-town itself where the said
 “ offence was committed.”

And not hav-
 ing sufficient
 to pay it, to
 be imprisoned
 six months
 without bail,

and stand in
 the pillory.

Prosecution
 in six months.

+ *Stat. 5.* By 1. Geo. 1. st. 2. c. 47. s. 2. it is provided,
 “ That no such action shall be brought, or prosecution
 “ carried on, by virtue of this act, unless the same be com-
 “ menced within six months after the offence committed.”

Constables
 may apprehend de-
 serters.

+ *Stat. 6.* By the 33. Geo. 3. c. 9. the last Mutiny Act,
 it is enacted, “ That the constable may take up any person
 “ reasonably suspected to be a deserter, and carry him before
 “ a justice in or near the place, who shall examine such sus-
 “ pected person; and if, by his confession, or the oath of
 “ one witness, or the knowledge of such justice, he shall be
 “ found to be a deserter, the justice shall forthwith cause
 “ him to be conveyed to the county gaol, or house of cor-
 “ rection (or the *Savoy* in *London*), and transmit an account
 “ thereof to the secretary at war; and the keeper of such
 “ gaol or house of correction shall receive the subsistence
 “ of such deserter, for his maintenance while he shall be in
 “ custody, but shall not be intitled to any fee for his im-
 “ prisonment.”

† *Secl.* 7. But by 33. Geo. 3. c. 9. " No officer may
 " break open any house to search for deserters, without a
 " justice's warrant, on pain of twenty pound."

† *Secl.* 8. And by 33. Geo. 3. c. 9. " The justice, be- ^{20s. reward.}
 " fore whom he is brought, shall issue his warrant to the
 " collector of the land tax of the parish or township where
 " such deserter shall be apprehended, for paying out of the
 " land-tax money by him collected or to be collected, to
 " the hands of him who shall apprehend, or cause to be ap-
 " prehended, such deserter, the sum of twenty shillings, the
 " same to be allowed on his account."

† *Secl.* 9. And by 33. Geo. 3. c. 9. " If the court- ^{Punishment}
 " martial, before whom such deserter shall be convicted, ^{of deserters.}
 " shall not think the offence deserving of capital punish-
 " ment, they may, instead of awarding a corporal punish-
 " ment, adjudge him to serve as a soldier in any corps sta-
 " tioned in any of his majesty's dominions beyond the
 " seas, or in foreign parts, or for life, or for a certain term
 " of years: and if he shall, without leave of his majesty or
 " of the commanding officer, return within the time limited,
 " and shall be convicted thereof by a court-martial, he
 " shall suffer death."

† *Secl.* 10. And by 33. Geo. 3. c. 9. " If any person ^{Harbouring}
 " shall knowingly harbour or assist any deserter, he shall ^{or assisting de-}
 " forfeit five pounds; and if any person shall knowingly ^{serters.}
 " buy or exchange or otherwise receive any arms, cloaths,
 " or furniture belonging to the king, from any soldier or
 " deserter, or change the colour thereof, he shall forfeit five
 " pounds; and on conviction by the oath of one witness,
 " before one justice, the said penalties shall be levied by
 " distress; half the first penalty to be to the informer, by
 " whose means such deserter shall be apprehended, and
 " half the last penalty to the informer; and half of both
 " to the officer to whom the deserter did belong; and if
 " such persons have not sufficient, or shall not pay the pe-
 " nalty in four days, the justice shall commit him to gaol
 " for three months, or cause him to be publicly whipped."

CHAPTER THE FIFTY-EIGHTH.

OF

PURVEYANCE.

ANCIENTLY the king's court was supplied with necessities from the ancient demesnes of the crown, which were manured for that purpose, and in respect thereof the tenants of those lands had many privileges, which they still enjoy; but this method being found to be troublesome and inconvenient, was by degrees disused, and afterwards the king used to appoint certain officers to buy in provisions for his household, who were called purveyors, and claimed many privileges, by the prerogative of the crown, and seem to have had the pre-emption of all such victuals as were brought by any one to sell again.

† *Stat. 2.* By *Magna Charta*, chapter 21. "The king shall not take the timber of any person against his will:" and by many subsequent statutes, several offences of purveyors were made felonies; as if they took things above the value of twelve-pence against the will of the owner, without warrant, or without such appraisement as was directed by those statutes, or without paying for them, &c.

† *Stat. 3.* But these laws having been found by experience not to have sufficiently provided against the oppressions of persons employed for making provisions for the king's household, carriages, and other purveyance for his majesty, and several counties having found themselves obliged to submit to sundry rates and taxes, and compositions, to redeem themselves from such vexations and oppressions, as it is recited by 12. Car. 2. c. 24. §. 12. it was enacted by the said statute, "That from thenceforth no sum or sums of money, or other thing, shall be taken, raised, taxed, rated, imposed, paid, or levied, for or in regard of any provision, carriages, or purveyance for his majesty, his heirs or successors."

Stat. 4. And by 12. Car. 2. c. 24. f. 13. it is further enacted, "That no person or persons, by any warrant, commission, or authority under the great seal, or otherwise, by colour of buying or making provision or purveyance for his majesty, or any queen of *England* for the time being, or of any the children of any king or queen of *England* for the time being, or that shall be, or for his, their, or any of their household, shall take any timber, fuel, cattle, corn, grain, malt, hay, straw, victual, cart, carriage, or other thing whatsoever, of any the subjects of his majesty, his heirs or successors, without the free and full consent of the owner or owners thereof, had and obtained without menace or enforcement; nor shall summon, warn, take, use, or require any the said subjects to furnish or find any horses, oxen, or cattle, carts, ploughs, wains, or other carriages, for the use of his majesty, his heirs or successors, or of any queen of *England*, or of any child or children of any of the kings or queens of *England* for the time being, for the carrying the goods of his majesty, his heirs or successors, or the said queens, or children, or any of them, without such full and free consent as aforesaid; any law, statute, custom, or usage to the contrary notwithstanding."

Stat. 5. And by 12. Car. 2. c. 24. f. 14. it is further enacted, "That no pre-emption shall be allowed or claimed in the behalf of his majesty, or of any of his heirs or successors, or of any of the queens of *England*, or of any of the children of the royal family, for the time being, in market or out of market, but that it be free to all and every the subjects of his majesty, to sell, dispose, or employ his said goods to any other person or persons, as him listeth; any pretence of making provision or purveyance of victual, carriages, or other thing for his majesty, his heirs or successors, or of the said queens or children, or any pretence of pre-emption in their, or any of their behalfs notwithstanding. And if any person or persons shall make provision or purveyance for his majesty, his heirs or successors, or any the queens or children aforesaid, or impress or take any such carriages, or other things aforesaid, on any pretence or colour of any warrant aforesaid, under the great seal, or otherwise, contrary to the intent hereof, it shall be lawful for the justices of peace, or such two or one of them as dwell near, and to the constables of such parish or village where such occasion shall happen, at the request of the party grieved, to commit, or cause to be committed, the party or parties so doing and offending, to gaol, till the next sessions, there to be indicted and proceeded against for the same, &c."

Stat. 6. But this absolute and universal restraint of all kinds of purveyance having been found by experience inconvenient, it was enacted by 13. and 14. Car. 2. c. 20. which has been often continued by subsequent statutes, that the officers of the navy may press carriages for the use of his majesty's navy and ordnance, according to the regulations prescribed by that statute, and the like was enacted by 1. Jac. 2. c. 10. in relation to the king's royal progresses, &c.

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O F
P R I N C I P A L M A T T E R S
C O N T A I N E D I N T H E
F I R S T V O L U M E.

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2. By 5. Eliz. c. 11. clipping, &c. any of the monies of this realm, or foreign money, suffered to be current by proclamation, is made high treason, 91. f. 61
3. By 18. Eliz. c. 1. whoever, for lucre, shall diminish, lighten, &c. &c. any of the monies as aforesaid, shall be guilty of high treason, lose goods, &c. &c. and lands during life, but no corruption of blood, 100
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2. Those who coin the king's money, without authority, are guilty within this clause, whether they utter it or not, 98. f. 55
3. So also are the authorized *minters*, if they coin it of baser alloy than the standard, ib.
4. Receivers and comforters also are equally guilty, but clippers are not within this act, 99
5. But to compleat the crime, the counterfeiting must be such as to render the coin passable, ib.
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9. And by 14. Eliz. c. 3. to counterfeit gold or silver coin, *not of the realm*, nor permitted to be current, or to aid or abet therein, is misprision of treason, 99. f. 60
10. By 5. Eliz. c. 11. clipping, washing, rounding, or filing, for lucre or gain, any of the proper monies of this realm, or of any other realm made current by proclamation, or aiding therein, is declared high treason, 99. f. 61
11. By 18. Eliz. c. 1. to impair, diminish, falsify, scale, or lighten, by any art or means, for *lucre or gain*, any such monies, or to aid or consent thereto, is high treason, with loss of goods absolutely, lands during life only, but no corruption or loss of dower, 100. f. 61
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12. By 8. & 9. Will. 3. c. 26. whoever, except the minters, shall make, &c. any puncheon, counterpuncheon, matrix, stamp, dye, pattern, or mould, in or upon which shall be made, or which will make, the figure, stamp, resemblance, &c. of both or either of the sides of any current gold or silver coin, shall be guilty of high treason, Page 100
13. Whoever shall make or mend, &c. any edger, or edging tool, instrument, or engine, not of common use in any trade, but contrived for marking the edges of money, with such letters or grainings as those on money coined in the mint, shall be guilty of high treason, ib.
14. Whoever shall make or mend, &c. any press for coinage, or any cutting engine, for making blanks, by force of a screw, out of flattened bars of gold or silver, shall be guilty of high treason, ib.
15. Whoever shall *knowingly* have any such puncheon, counterpuncheon, matrix, stamp, dye, edger, cutting instrument, or other tool or instrument before mentioned, shall be guilty of high treason, ib.
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18. Counsellors, procurers, aiders, &c. are within this act, but no corruption Vol. I.
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19. By 7. Ann. c. 25. prosecutions upon the above statute, for making, &c. the tools or instruments therein prohibited, or for milling the edges of money, shall be commenced within six months, 102
20. By 8. & 9. Will. 3. c. 26. s. 2. to convey or assist in conveying any coining tools out of the mint, is high treason, 102, 103
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23. It has been adjudged immaterial whether the colouring be *put on*, or made to *arise out of* the subject coloured, 103
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25. By 15. Geo. 2. c. 28. to wash, gild, or colour, or to add to, or alter the impression of any shilling or sixpence real or counterfeited, with intent to make them resemble either a guinea or half guinea, is high treason, 105
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27. Counsellors, aiders, abettors and procurers are within this statute, ib.
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28. The counterfeit money must be in the *likeness and similitude* of the lawful money, Page 106
29. By 25. Edw. 3. c. 2. to bring false money into the realm, counterfeit according to the similitude of the money of *England*, to merchandize, or make payment with, is high treason, ib.
30. By 1. & 2. Ph. & Mary, c. 11. to bring into the realm money, counterfeit to foreign coin current here, is high treason, ib.
31. The party bringing must know it to be false, 106. f. 86
32. It must be from a foreign nation, and not from any place subject to the *British* throne, 106
33. The bare uttering is not within these statutes, ib.
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By 21. Geo. 3. c. 49. all houses for publicly debating, &c. on any part of the Lord's-day, to which persons shall be admitted for money, or by charging an unusual price for refreshments, &c. shall be deemed a disorderly house, and the keeper, master, and director thereof, subject to fine and imprisonment, 16

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